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ESTABLISHED, 1871. INCORPORATED, 1878.

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OLIVER'S
SHIPPING LAW MANUAL.

OLIVER'S SHIPPING LAW MANUAL.

SIXTH EDITION.

BY
W. MILLS ROCHE,
Solicitor.



LONDON:
IMRAY & SON, 89 & 102, MINORIES, E.
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INTRODUCTORY.

THE chief object of the following treatise is to afford assistance to Shipowners and Captains when abroad, or when unable to obtain professional guidance. It has therefore been written as concisely and simply as possible, avoiding all case-references or other unnecessary technicalities, and details which might puzzle the lay reader.

The fact that this *brochure* has now passed through five editions is a gratifying proof to the author that it has fulfilled the original design, and conferred a real benefit upon those for whom it was intended; and in order to obtain a still greater measure of public support, every page of the last edition has been revised so as to incorporate the numerous material alterations which have been made in Merchant Shipping Law during the years 1874 to 1878, both by statutory enactment and judicial decision. New chapters on "Inquiries into Shipping Casualties" (page 181), and "Unseaworthiness" (page 204), have been added, as these subjects have recently assumed increased importance. A complete digest of all the

provisions of the Merchant Shipping Acts now in force has been added, together with a copious index, which will enable the reader to make immediate reference to any particular subject which may require consideration. The whole has been re-composed in larger type, and printed upon larger paper; in short, neither editorial care or expense has been withheld, and it is hoped that this edition will meet with as much success as its predecessors.

SUNDERLAND,

February, 1879.

CONTENTS.

	PAGE
OWNERSHIP OF SHIPS	1
CHARTER-PARTIES	7
BILLS OF LADING.	25
LOADING	32
THE VOYAGE	48
COLLISION.	69
COLLISION DIAGRAM	82
STOPPAGE IN TRANSITU	86
END OF THE VOYAGE	88
DELIVERY OF THE CARGO	91
PAYMENT OF THE FREIGHT	97
DEMURRAGE	109
PROTESTS	117
HOMEWARD CARGO	119
SHIPBROKERS' COMMISSIONS	122
MARINE INSURANCE	127
GENERAL AVERAGE	161
PARTICULAR AVERAGE	174

	PAGE
INQUIRIES INTO SHIPPING CASUALTIES	181
UNSEAWORTHINESS	204
GENERAL RULES FOR COURTS OF SURVEY	223
ARBITRATION	231

APPENDIX.

FORMS	238
DIGEST OF MERCHANT SHIPPING ACTS, 1854 to 1876	251

OLIVER'S

SHIPPING LAW MANUAL.

OWNERSHIP OF SHIPS.

THE registered owners of British ships must be either—

- (1.) Natural born British subjects* ; or,
- (2.) Naturalised British subjects, resident in Her Majesty's dominions ; or,
- (3.) Bodies corporate, carrying on business in any of Her Majesty's dominions.

The property in a British ship is transferred by bill of sale, to be signed by the person who is registered owner. The new owner makes a declaration in the proper form, stating that he is entitled to be registered as owner, and the bill of sale is then recorded in the registry of the port to which the ship belongs. If, however, the ship is newly built, and has not been previously registered, the builder may transfer her to any purchaser, who is thereupon entitled to be registered as owner, on producing the builder's certificate, and the declaration before mentioned. Bills of sale are

* A British subject who has taken the oath of allegiance to a foreign state, can only be registered as owner of a British ship if he has *subsequently* taken the oath of allegiance to Her Majesty, and continues, during such ownership, resident in Her Majesty's dominions.

registered in the order in which they are produced at the Custom House; and as the registry is the evidence of title to the ship, a bill of sale not registered must give way to a second bill of sale of subsequent date, if the latter is registered first, in which case the other cannot be registered at all. If the ship is lost the owners are bound, under a penalty, to give information to the Custom House, and deliver up the certificate of registry, in order that the registry may be closed. The registry is also closed if the ship becomes vested in persons who are not entitled to be registered as owners of British ships.

REGISTRY OF SHIPPING.

Every British ship must be registered, excepting—

- (1.) Ships not exceeding fifteen tons burden, employed in rivers, or in coasting, &c.
- (2.) Vessels not exceeding thirty tons burden, having no whole or fixed deck, and employed in fishing in Canada, and adjacent coasts.

A ship which is not registered cannot be recognised as a British ship, and is not entitled to the protection offered by the British flag. If a ship not registered as a British ship wrongfully use the British flag, or if a British ship wrongfully use the flag of any foreign State (unless it be for the purpose of escaping from an enemy), she is liable to forfeiture to the Crown.

The port of registry may be changed if all the persons interested in the ship apply, by writing, to the registrar at the Custom House where the ship is registered.

The registry of any ship may be inspected at the

Custom House of the port where she is registered, or at the London Custom House, on payment of a fee of one shilling.

On the death of any registered owner, his executor or administrator must make a declaration to have his name inserted on the register ; or if the owner become bankrupt, the trustee under the bankruptcy must make a somewhat similar declaration to have his name put on the registry.

The person whose name appears by the registry to be owner or mortgagee, is the only person who, on selling, can give a title to the ship.

The ship is supposed to be divided into sixty-four shares ; but not more than thirty-two owners can be registered. Any number of persons, however, not exceeding five, may be registered as joint-owners of any shares in the ship. No notice of a trust can be entered on the registry.

THE CERTIFICATE OF REGISTRY.

On the registration of a ship, a certificate of the registry is issued. The certificate is not any evidence of the title to the ship, but is used solely for her navigation ; and any person who, without reasonable cause, detains it from the person who is entitled to the possession of it for the purpose of navigating the ship, is liable to a penalty of £100, which may be recovered by proceedings before the magistrates.

If the master or owner use a certificate which has not been legally granted, he is guilty of a misdemeanour, and the ship is liable to be forfeited to the Crown.

All changes of owners or masters should be endorsed on the register ; and if alterations have been made in

the ship, in consequence of which the description contained in the register is no longer accurate, it should be produced at the Custom House for correction, or a new register should be obtained. A new certificate of registry can also be obtained, if the old one is worn out or lost, on satisfactory proof of the facts.

PART OWNERS.

If no ship's husband has been appointed, and the different part owners of a ship cannot agree as to the voyage on which she is to sail, the majority in value may send her on such voyage as they think fit, on giving to the dissentient minority a security to bring back the ship, or pay the value of their shares, if she be lost, and in that case the voyage is entirely for the benefit, and at the risk, of the part owners who send her on the voyage; the dissentient owners do not contribute to the cost of the ship's outfit, and they do not participate in any profit she may make by the voyage. The minority may apply to the Court of Admiralty to obtain the above-named security; or if, before the ship is chartered, they give notice to the other owners that they do not agree to the chartering of the ship, then if the charter is carried out and the ship is lost, the loss will fall entirely on the owners who chartered the ship.

A part owner has no right to charge against his co-owners the cost of insuring the ship, unless they have authorised him to insure her.

If the accounts of a voyage are agreed to by a majority of the owners, the remaining owners are bound by it, unless they can show some error in the account.

No part owner can be compelled by his co-owners to sell his share in the ship, unless some definite agreement has been entered into between the co-owners to provide for a sale in the event of disputes occurring between the owners. It is therefore desirable in all cases to have a navigation agreement. (A form will be found in the Appendix.)

THE SHIP'S HUSBAND.

A ship's husband may be appointed either verbally or by writing ; but to prevent disputes, the appointment should always be in writing. (A form will be found in the Appendix).

When appointed, he becomes the agent of the owners, who are bound by all acts done by him, within the limits of the authority given to him. He is *primâ facie* the agent of all the owners for doing everything necessary for the management of the ship's affairs.

The ship's husband, however, has no implied authority to insure the ship, and if it is desired to give him power to insure, he should be specially authorized to do so by his appointment or otherwise. Neither has he any power to purchase cargo on behalf of the other owners, unless he obtains a special authority to do so. He may, however, order any necessary repairs to be done to the ship, unless he has been expressly forbidden to do so by his co-owners.

At the end of every voyage he ought to make up his accounts within a reasonable time, ready to be inspected by his co-owners ; and when the freight is received by him, he should divide it amongst the

owners, after deducting the expenses incurred in earning it.

MORTGAGES ON SHIPS.

Any registered ship may be mortgaged by a deed in the form given in the Act. The deed must be registered at the Custom House where the ship is registered; and if there are several mortgages, the one which is *registered* first is entitled to priority over all registered subsequently, although it may bear a later date than the others.

Every registered mortgagee has power to sell the ship. But no subsequent mortgagee can exercise his powers of sale without the concurrence of all prior registered mortgagees. He may, by endorsement on the mortgage deed, transfer the mortgage; and, if transferred, the transfer should also be registered at the Custom House.

When a mortgagee is paid off, a receipt should be endorsed on the mortgage deed, and registered at the Custom House.

CHARTER PARTIES.

A CHARTER PARTY is an agreement for letting to hire the whole or part of a ship.

To constitute a valid charter party, no precise form of words is necessary. So long as the intention is expressed, that is sufficient, and it is not even necessary that the agreement should be in writing; a mere verbal agreement between a shipowner and merchant for the employment of a ship, and acted on by the parties, has been held to be equivalent to a charter party. But, of course, it is very desirable that the charter should be in writing, in order to prevent uncertainty, and in order that the terms of the agreement may, in case of dispute, be more easily proved by either party.

If the shipowner is not on the spot, the captain has an implied authority to enter into all necessary contracts for the navigation of the ship; but if a charter party has previously been entered into by the shipowner himself, then the captain has no authority to substitute a different contract, by entering into a new charter, except under very special circumstances.

If the ship is mortgaged, the shipowner, who is in possession of the ship, has power to enter into contracts for the employment of the ship, if the security is not thereby impaired, and such charters are binding on the mortgagee; but the mortgagee can afterwards obtain the *benefit* of the charter by giving notice to the charterer to pay the freight to him. The only way in which the mortgagee can *prevent* the owner from chartering, is by taking possession of the ship, under

the powers in his mortgage deed; when he takes possession he is entitled to receive all the earnings of the ship then unpaid.

If the charter is entered into by the captain, then he may be sued by the merchant in case of any dispute, unless in signing he expresses that he signs only as agent for the owners.

If the charterer enters into the contract as agent for another party, he should state the name of his principal in the body of the charter, both for the protection of himself, by preventing any *personal* liability from attaching to him, and also for the protection of the shipowner, by informing him definitely who is the party to be liable to him under the charter.

If a ship belongs to several owners, and no ship's husband has been appointed, or no agreement made as to the navigation of her, the majority in value have the right to employ the ship as they think fit.

CONTENTS OF THE CHARTER PARTY.

As nearly all the rights and liabilities of both the merchant and the shipowner respecting the carriage of the cargo depend on the stipulations contained in the charter, and as both parties are bound by the terms of the contract they enter into by the charter, care should be taken that it contains no provisions which are unusual or which may be prejudicial to the rights of the parties.

Verbal promises should not be relied on by either party, for when the terms of the agreement are reduced to writing, the writing alone will bind the parties, and any merely verbal promise, whether made at the time of signing the charter or not, cannot be enforced by

either party. If the parties put the terms of their agreement into writing, the law supposes that they insert the whole of the terms in the writing; and, therefore, it is not allowable for either party to give evidence of any agreement beyond what has been stated in the writing they have signed. But like all other mercantile instruments, a charter may be *explained* by verbal evidence of the custom of the trade to which it relates, provided that the express words of the charter are not inconsistent with, or opposed to, the custom, in which case the custom would be excluded.

If the charter is for various different kinds or qualities of goods, the proportion of each which it is intended to load should be specified; if this is not done, the charterer will be entitled to load the goods in any proportion he pleases.

If the charter-party stipulates that the captain is to sign bills of lading at any rate of freight, it should also provide for the payment of the difference between the charter freight and the bill of lading freight in cash at the port of loading before the bills of lading are signed; otherwise if the bills of lading come into the hands of third parties who have no notice of the terms of the charter, the shipowner will only have a lien on the cargo for the amount of freight named in the bills of lading, and his claim for the balance will be against the charterer, who may in the meantime have become insolvent, or otherwise unable to pay, or may be a foreigner residing out of the jurisdiction of the British Courts.

The freight should be made payable in cash on delivery, if it is desired to have a lien on the cargo to secure payment of the freight. If the freight is payable *after* delivery of the cargo the lien is lost, although the

merchant may have become insolvent in the meantime. If it is to be payable by bills, approved bills should be named, if that is intended.

The word "days" ~~in a~~ charter (without specifying whether "working" or "running" days) is considered by law to mean running days, and Sundays therefore are counted, unless by the custom of the port (as at London, for instance) it is the invariable practice to reckon only working days, then working days only will be reckoned, unless otherwise stated in the charter. If it is agreed that only working days are to be counted as lay days, that mode of reckoning will not extend to the demurrage days. After the ship is on demurrage, all days are counted.

If a certain number of days are to be allowed for "loading and discharging," it should be clearly expressed that the number stated is the whole of the time allowed for completing *both* objects, or the merchant may be entitled to the specified time for loading, and the same for discharging.

The exception which exempts the shipowner from liabilities from "dangers and accidents of the seas, rivers, and navigation," has been held to mean only permanent dangers and accidents, and not mere temporary impediments, such as want of water in rivers caused by long continued drought or neap tides; therefore, in the absence of any special stipulation to the contrary, the shipowner takes the risk of having to wait for sufficient water to enable him to reach the port to which he is to proceed.

The charterer has power to sublet either the whole or any part of the ship to another, and, therefore, if it is intended to prevent him from doing so, it must be so stated in the charter.

If the charter states that the charterer is an agent, and will not be liable after the cargo is shipped, and it turns out that he is in reality the principal, he will be liable, notwithstanding the stipulation in the charter to the contrary.

If the ship is to carry a deck load of timber, or other merchandise, the shipowner will be liable to bear his share of the loss, in general average, if it is jettisoned, and he cannot recover the amount from his underwriters. To protect the shipowner, therefore, it is necessary that the charter should state that the deck load is to be entirely at the merchant's risk, if that is intended.

Since the Merchant Shipping Act, 1876, no British or foreign ship may under penalty arrive in the United Kingdom, between the last day of October and the 16th day of April in every year, carrying a deck load of timber unless the act was necessary or justifiable under the circumstances.

The charter should always contain the usual clause which exempts the shipowner from liability for loss by perils of the sea, &c.

If the ship is chartered for a lump sum, the draught of water should be named in the charter, to prevent the charterer from overloading the ship.

The charter should always provide for a full cargo, if that is intended, otherwise the charterer will only be liable to pay freight on the quantity of goods which he actually puts on board, unless he has agreed to pay a lump sum, at the rate of so much per ton of the ship's capacity, and not according to the quantity of cargo actually carried.

The penalty usually inserted at the end of the charter does not increase the liability of either party in case of a breach of the charter. The person suing on the clause

cannot recover more than the amount of damage he has actually sustained, unless it is stated in the charter that the amount named for the penalty is to be considered as the amount of "liquidated" (or ascertained) damages in case the charter should be broken, and it is clear that the parties intended the penalty to be the measure of the damage for the breach of contract. The naming of a penalty in the charter, however, will prevent the party who sues from recovering *more* than that amount, on the ground that he has himself estimated the maximum amount of the damage he would sustain by the breach of contract, by inserting that sum in the charter.

The clause sometimes inserted in charter parties which stipulates that the cargo shall be bound for the performance of all the conditions of the charter is also practically useless; and whether the charter contains this stipulation or not, the shipowner can only hold the cargo until he is paid those sums for which the law gives him a lien on the cargo. Thus, even without such a provision in the charter, the shipowner can detain the cargo for payment of the freight, general average, &c; and, if the clause is inserted, he cannot detain the cargo for payment of any charge for which he has not by law a lien on it, such as demurrage, dead freight, or damages for breach of contract, &c.; but he must enforce these claims by action-at-law, unless the charter stipulates that he is to have a lien on the cargo for these claims, and in that case, of course, he can detain the cargo till the amounts are paid.

There is sometimes a clause inserted by which the charterer's liability is to cease on the shipment of the cargo: the shipowner to look to the cargo only for the

freight and demurrage which may become due at the port of discharge. And in a recent case it has been held that such clause exempts the charterer from liability, even although he be also the consignee of the cargo.

PROVISIONS AS TO DEPTH OF WATER, &C.

If there be any doubt as to the sufficiency of water at the proposed port of discharge, a provision should be inserted in the charter that the merchant shall, if necessary, lighten the ship on arrival at his own expense and risk, otherwise the vessel may have to wait for a suitable tide to enter the harbour, and the shipowner would have no claim against the merchant for demurrage for the delay.

The shipowner should make inquiries as to the depth of water, &c., at the port to which it is proposed to send the ship, and should not rely on any verbal statements made by the merchant as to how much water there is. If the merchant says there is sufficient water, and it is intended that he should be bound by this statement, he should insert it in writing in the charter, either by saying that the ship is to be lightened at his expense and risk, as named above, or by saying that the lay days are to commence from arrival at the entrance port of loading or discharge.

The words "as near thereto as she may safely get," mean as near as the ship can get, unless prevented by some *permanent* obstruction. The ship may, therefore, have to wait for a spring-tide, unless the charter says "so near as she may safely get *immediately after arrival off the harbour*," or other equivalent words. It has been held that the words "as near thereto" must be taken with reference to the port as to which the parties were contracting, and inasmuch as the contract in

question related to a tidal harbour, those words had to be explained with reference to that fact. That is, the parties must be assumed to have taken into consideration that in a tidal harbour the ship could reach places within the limits named, at certain states of the tide only, and the delay was no delay on the part of the freighter, but was inevitable, as the water was low when the ship arrived off the harbour. But still, if it is the regular custom of the port to unload or lighten the ship before she gets to the quay, the merchant will be bound to do it in the usual way.

If the ship is chartered to *load* at a certain place, "or so near thereto as she may safely get, and there take a full cargo," this has been held to mean a place to which the ship can safely get, and from which, *when loaded*, she can safely get away at a suitable tide, and if necessary the merchant is bound to load a part of the cargo in the roads at his own expense.

WARRANTIES.

If the shipowner does not carry out the provisions of the charter, it is often a matter of considerable importance to decide whether a merchant has the right to abandon the charter altogether, or whether he still remains bound to fulfil his own part of the contract, with the right to bring an action for damages against the shipowner. This will depend upon whether the stipulation which has been broken by the shipowner is a condition precedent (or warranty) or not. A condition precedent is a condition which is, by the terms of the charter, to be performed by the one party before the other party becomes liable to perform his part of the contract at all. If any stipulation, therefore, which amounts to a condition precedent, has not been

complied with by the shipowner, the merchant has the right to abandon the contract altogether, and he can also sue the shipowner for damages for his breach of contract; but, on the other hand, if the matter does not amount to a condition precedent, the merchant will be bound to carry out his part of the contract, and can only sue the shipowner for damages.

Statements in the charter which amount to a warranty, must be strictly complied with. Thus, if the charter describes the ship to be classed A 1, that is considered to be a warranty that the vessel is A 1, and if she is not so, the charterer can repudiate the contract. It is, however, a sufficient compliance with the warranty if the vessel is A 1 at the time the charter is signed; for a statement to the above effect does not imply that she shall continue so during the voyage, or even until she arrives at her place of loading. If the ship is described to be then at a certain place, that is also considered a warranty, and her locality must be correctly stated. In a case where the vessel was described to be "now at sea, having sailed three weeks ago," the vessel having only sailed a fortnight, the charterer was released from his contract. In another case, the vessel was stated in the charter to be "now in the port of Amsterdam," whereas, in fact, she was not there on the day the charter was signed, but was at sea sixty-two miles distant, and reached Amsterdam the next day. In that case also it was held that the merchant had a right to abandon the charter. In another case, when the ship was wrongly described to be at sea, when, in fact, she had not left port, the statement was held to amount to a warranty, and the merchant was discharged from all liability.

If the charter says the ship shall sail for her port of

loading, or arrive there on or before a certain specified day, that is a condition precedent; and if she does not comply with the condition within the time named, the merchant will be entitled to abandon the contract; for if a certain day is named, that time is always considered an essential element in the contract. If the condition is to sail before a certain day, it is a sufficient compliance if the ship quits her moorings before the day named, provided she is then quite ready for sea, and also provided that it is done with the *bonâ fide* intention of commencing the voyage.

But if the charter only states *generally* (without naming any particular day) that the ship shall sail to a particular port to receive a cargo, then the sailing of the vessel without delay or deviation is not a condition precedent, the non-performance of which would discharge the charterer from liability to furnish a cargo, but the charterer would be liable to furnish the cargo, and could recover damages from the shipowner to compensate him for the loss, if any, sustained by the delay. But if the delay was so unreasonably long that the charterer loses *all* benefit from the intended voyage, or has thereby been prevented from obtaining the cargo, then he will be released altogether from his liability to perform the contract, and he can sue the shipowner for damages.

If the charter says the ship is to arrive at her port of loading before a certain day, unless prevented by stress of weather or unavoidable impediment, then, if *ordinary* diligence be used to reach the port of loading, the merchant will continue bound by the charter if the ship be detained until after the time stipulated, even if the detention be from causes which *extraordinary* exertion might have overcome, for ordinary diligence is all that

the shipowner is bound to exercise. Or if the charter says the ship is to sail with all convenient speed, or in a reasonable time, then that is not a condition precedent.

If the merchant becomes entitled to abandon the contract, he must exercise his option as soon as the breach of warranty occurs. If he afterwards does anything in part performance—for instance, if he ships a portion of the cargo, or accepts any benefit from the contract, or if the voyage has been performed—he will then be compelled to complete also his part of the contract by paying the freight. Even if the carrying capacity of the ship be warranted, and the merchant is unable to discover whether the ship will actually carry the quantity named until after he has loaded the cargo, still he cannot after loading the ship refuse to carry out the charter.

If the size of the ship is described to be a certain number of tons, “or thereabouts,” that is considered a representation only, and not a warranty; and therefore, although the description be not strictly correct, if it is made *bonâ fide*, and without any intention to deceive, the merchant will be bound to carry out the charter, notwithstanding that the ship is larger or smaller than described in the charter, unless the difference is very unreasonable. In a case where the ship was described to be of the measurement of 180 to 200 tons, or thereabouts, but was actually 257 tons, the statement of the tonnage was held not to be a warranty or an unreasonable difference, and it was held that the merchant was bound to load the ship with a full cargo according to his contract. Whether the difference is unreasonable or not is a question for the jury to decide.

The statement in the charter, also, that the ship is “tight, staunch, and strong, and every way fitted for the voyage,” is not by itself a warranty; therefore, if she is

not seaworthy, or fit for the voyage, the charterer is not justified in repudiating the charter altogether; but he must load the ship and recover damages for any injury which he can show he has suffered by reason of the ship's unseaworthiness, unless such unseaworthiness will prevent the charterer from deriving any benefit whatever from the voyage proposed. Other additional provisions in the charter party, however, may have the effect of making the seaworthiness of the ship a condition precedent; thus, in a case where the charter stipulated that part of the freight should be paid in advance, *subject to insurance*, and as the insurance could not be legally and properly effected, unless the ship was seaworthy, it was held that the seaworthiness of the ship was warranted, and was therefore a condition precedent, which must be complied with before the charterer was bound to carry out the charter.

In a charter which provided that the ship should proceed to Alexandria, "with all convenient speed (on being ready), having liberty to take an outward cargo for owners' benefit direct or on the way;" that was held not to create a condition precedent, the breach of which would justify the merchant in refusing to load the ship at Alexandria, but it only gave him a right of action against the shipowner for damages; the Court being of opinion that it was not the intention of the parties that the merchant should be altogether exonerated if the ship made a slight deviation.

As the question of whether any stipulation is a warranty or not, depends on the intention of the parties, as shown in the charter party; each case must depend on the words which the parties make use of. If the words do not amount to a warranty, or if the *whole* object of the voyage is not lost, the stipulation is con-

sidered merely a collateral agreement, the breach of which by one party will not justify the other in refusing altogether to carry out his own part of the contract, but it will only give him a right to sue the other party for damages for his breach of the contract.

INTERPRETATION OF CHARTER PARTIES.

In construing the meaning of the terms adopted by the parties in the charter, the Courts endeavour to adopt an interpretation which is liberal and according to the true intention of the parties. The contract will not be construed so as to lead to absurd or unreasonable results, for the law will not presume that the parties intended to make an absurd or unreasonable contract; but if the words are clear and positive, they will be adhered to, however hard they may prove, for the parties should be more cautious before they enter into the contract.

A charter is construed so as to make it conformable to the custom of the trade to which it relates, unless such custom is at variance with the express terms of the contract. The parties are supposed to intend their contract to be carried out in the usual and customary manner.

The *express* provisions of the charter cannot be altered or varied by verbal evidence, but verbal evidence is admissible to *explain* its meaning,—for instance, by explaining some usage of trade applicable to the subject.

The printed part of a charter party is of as great weight as the written part, although a different rule prevails in the case of insurance policies.

Both the validity of the contract and the interpretation of it depend on the law of the country where the contract is made, but the mode of enforcing it is governed by the law of the country where it is to be enforced.

If the voyage becomes illegal before it is commenced, the charter is considered to be rescinded; for instance, if war is declared with the State to which the ship is about to sail, or if the exportation of the cargo is prohibited by our Government at home.

CUSTOMS AND TRADE USAGES.

All mercantile agreements are governed by the known and established usages of the trade in connection with which they are made. The parties entering into the contract are supposed tacitly to agree that it is to be performed according to the universal custom of the trade, unless they insert express provisions in it which are inconsistent with, or contrary to, the usage, and then, of course, the words of the contract will exclude the operation of the usage, evidence of which is only admissible to *explain* the supposed intention of the parties, and not to *contradict* what they have agreed to.

In giving judgment in one case, Lord Campbell said: "The parties are supposed to leave to implication and tacit understanding all those general and unvarying incidents which an uniform usage would annex, and according to which they must in reason be understood to contract, unless they expressly exclude them." Evidence of a usage, therefore, is only admissible when both parties may be reasonably supposed to be cognizant of the usage. Persons engaged in trade are supposed to know all the general customs of the trade they engage in, but it is otherwise as to merely *local* customs. Usages of a particular port are not binding on a stranger not resident at that port, and who is ignorant of the usage, for the only reason on which a custom is allowed to form part of the contract is

because both of the parties are supposed to know of the custom.

To be valid, a usage must be a legal one. A usage which is contrary to the law cannot be set up to control or alter the law.

TIME CHARTERS.

When a ship is chartered by the "month," calendar months are understood, and not lunar months. If no period be named when the time is to commence, it begins to run from the time the vessel commences her voyage, and the freight becomes due at the end of each month, whether the vessel ever reaches her destination or not.

When engaged on a time charter, the freight continues to accrue notwithstanding that the voyage may happen to be delayed, provided the delay is not caused by the neglect or default of the shipowner; thus, as the owner is to keep the vessel in repair, if repairs are necessary, and during the voyage she is detained (uselessly to the charterer) to have the repairs done, freight must still be paid for the time she is detained for the repairs, unless it be otherwise provided by the charter.

When a ship is under time charter, the captain will be bound to accept any kind of cargo which is not injurious to the ship, and in any quantity within the carrying capacity of the ship, unless special provisions are inserted in the charter to restrict this right. The charter should, therefore, specify both the trade in which the ship is to be employed, and the kind of cargo she is to carry during the whole time of her employment. If the ship is insured by a policy containing any conditions as to the time of sailing on

certain voyages, or restrictions as to the quantity of certain heavy cargoes to be put on board, the charter should be framed accordingly, or the insurance of the ship may be invalidated by the merchant requiring the ship to break those conditions.

ALTERATIONS MADE AFTER SIGNING.

No alteration must be made in the charter after it is signed, except with the consent of all the parties. In a recent case, after the charter had been signed, the broker had inserted material words in the margin, and although the shipowner was not aware that the broker had made the alteration, still it was held to vitiate the charter altogether. The Court, in giving judgment, said:—"It is, no doubt, apparently a hardship that where what was the original charter party is perfectly clear and indisputable, and where the alteration or addition was made without any fraudulent intention, and by a person not a party to the contract, a perfectly innocent man should thereby be deprived of a beneficial contract; but on the other hand, it must be borne in mind that, to permit any tampering with written documents would strike at the root of all property, and that it is of the most essential importance to the public interest that no alteration whatever should be made in written contracts, but that they should continue in exactly the same state and condition as when signed and executed, without addition, alteration, erasure, or obliteration."

If the charter is altered by one of the parties, or while it is in the possession of one of the parties, although that will prevent *him* from enforcing any rights under it (even according to the terms it origin-

ally contained before the alteration), it does not prevent the *other* party from taking advantage of the charter, he being in no way responsible for the mutilation of the document which was not in his custody.

When a charter party has been signed, the parties cannot *verbally* make any alteration in its terms so as to be binding. If it is wished to alter the terms such alteration should also be reduced into writing, and be signed and stamped the same as the original charter ; or else the old charter should be cancelled, and a new one, containing the amended terms, substituted. A charter may, however, be *wholly rescinded* by a verbal agreement.

STAMP DUTY ON CHARTERS.

A stamp duty of 6*d.* is payable on all agreements for the charter of ships, and on any memorandum, letter, or other writing, between the master or owner of a ship, and any other person for or relating to the freight or conveyance of any goods on board of such ship.

The stamp duty may be denoted either by a stamp impressed on the charter, by sending it to the Stamp Office in London, or by an adhesive stamp affixed to it.

If an adhesive stamp be used, the person who last signs the charter, or whose signature completes the same as a binding contract, must cancel the stamp by writing thereon his name or initial, or the name or initials of his firm, together with the true *date of his so signing* the same ; if the date be omitted it will not be considered duly stamped, unless it be proved that the stamp was affixed at the proper time. Charters may be stamped at the Stamp Office, within seven days after the day of date, on payment of 4*s.* 6*d.*

penalty, in addition to the duty of 6*d.* After seven days, and within one month after signing, they can be stamped on payment of the duty of 6*d.*, and a penalty of 10*l.* After the expiration of a month, they cannot be stamped at all.

If an unstamped charter is first signed by a person out of the United Kingdom, any party to such charter may, within ten days after it is received in the United Kingdom, and *before* it is signed by any person in the United Kingdom, affix an adhesive 6*d.* stamp to it, which must then be cancelled by the party writing his name or initials and the true date of signing across the stamp as above. All documents first executed out of the United Kingdom relating to any matter to be done in the United Kingdom require a stamp, and may be stamped within two months after being first received in the United Kingdom.

Letters altering a charter are liable to the same stamp duty as a charter.

BILLS OF LADING.

THE charter party is the evidence of the contract between the shipowner and the merchant, and the bill of lading is the evidence of the goods having been shipped under the contract. If there is no charter, then the bill of lading will be the evidence of the contract, as well as of the shipment of the goods.

The charterer is always liable to the shipowner for any breach of the agreement he has made by the charter, but the consignee of the cargo is ordinarily only liable to carry out the terms of the bill of lading, as he may be altogether ignorant of the contents of the charter party. If it is intended that the consignee of the cargo should be bound by any of the terms of the charter, an express reference to such charter or any terms thereof should be inserted in the bill of lading. It is important, therefore (especially if the merchant who has chartered the ship is resident abroad, and beyond the jurisdiction of the English courts), that the bill of lading should mention all charges for which it is intended that the consignee is to be liable, otherwise the captain or owner of the ship will not be able to enforce those charges against the consignee.

In the case of *Chappel v. Comfort*, the law was explained as follows:—"The provisions of the charter party are only binding as between the shipowner and the charterer, and if there is a bill of lading given by the master, which gets into the hands of an assignee for

value, he is entitled to have the goods delivered to him upon his fulfilling the terms mentioned in the bill of lading, and he is not ordinarily bound to refer to the charter. Generally, a consignee taking goods under a bill of lading incurs no other liability than that of paying the freight. If it is desired that the assignee of the bill of lading should observe the terms of the charter other than those which relate to freight, it should be provided for in the bill of lading, as in the case of *Wegener v. Smith*, where the words of the bill of lading were 'to order against payment of the agreed freight, and other conditions, as per charter party' and it was then held that the consignee being bound to fulfil those other conditions, was liable for demurrage."

Every *endorsee* of a bill of lading, to whom the property in the goods passes by the endorsement, is now, under the Bill of Lading Act, 1855,* liable to the

* BILL OF LADING ACT, 1855.—SEC. 1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

SEC. 2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

SEC. 3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have

shipowner, and the shipowner is liable to him in case of any breach of the contract, just the same as if the contract in the bill of lading had been made with the endorsee himself.

An endorsee, however, who endorses the bill of lading again to another party, does not remain liable after endorsing it away.

If the merchant endorses bills of lading, and parts with all property in the goods, he cannot afterwards stop the goods from coming into the hands of the consignee, unless the consignee is merely his agent, or has become bankrupt in the meantime.

If two bills of lading of the same goods have been improperly endorsed to different parties, the person who holds the bill of lading which was *first endorsed*, is entitled to the goods to the exclusion of the other; but the master is justified in delivering the goods to the first person who presents a properly endorsed bill of lading. If, however, there is any probability of a dispute, he should obtain an indemnity from the person to whom he delivers up the goods.

CONTENTS OF BILLS OF LADING.

The usual form of a bill of lading is as follows:

SHIPPED in good order and well conditioned by———in and upon the good ship———whereof———is master for this present voyage now lying at———and bound for———, the following

had actual notice at the time of receiving the same that the goods had not been in fact laden on board: Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims,

goods, viz.: _____ being marked and numbered as in the margin, and to be delivered in the like good order and condition, at the port of _____, the act of God, the King's enemies, fire, and all and every the dangers and accidents of the seas, rivers, and of navigation of what nature or kind soever excepted, unto _____ or _____ assigns, he or they paying freight for the same, and performing other conditions as per charter.

In witness whereof, the master of the said ship hath signed _____ bills of lading, all of this tenor and date; one of which being accomplished, the others to be void. Dated the _____ day of _____ 187—.

Captain.

As the consignee is only liable to pay what is expressly stated in the bills of lading, the captain, before signing, should attend to the following matters:—

1st. The bills of lading should not state simply that the cargo is to be delivered "on payment of *freight* as per charter," otherwise the consignee will be liable to pay freight only, and he will not be liable for any demurrage or other charges. To protect the shipowner, the captain should take care that the bills of lading say, "consignees paying freight, and performing *other conditions* as per charter party," or other equivalent words.

2nd. The bills of lading should provide for the same rate of freight as is named in the charter party, otherwise the captain will only have a right to retain the cargo at the port of discharge until the amount of freight named in the bills of lading is paid; and if there is any deficiency, he will have to claim it against the original charterer. The captain cannot be compelled to sign the bills of lading for a lower rate than is named in the charter, unless it is so stipulated in the charter. If he does so without it being so agreed by the charter, the shipowner is not bound by it.

3rd. The master has no authority to sign bills of lading for any goods which have not been received on board, and if he does so the shipowner is not bound by it; although the master himself will be bound if the bills of lading are transferred to third parties who are ignorant of the error (unless the captain has been misled by the fraud of the shipper). The quantity, however, stated in the bill of lading is *prima facie* taken to be correct; if the shipowner disputes it he must prove that the bill of lading is erroneous. And if the bill of lading acknowledges the goods to have been shipped in good order and condition the shipowner cannot after delivery allege that they were shipped in a damaged condition, although such may have been the fact, and if they turn out to be damaged the shipowner will be liable for damage to the consignee. If, therefore, the captain is not satisfied as to the quantity or quality of the goods, he should *always* sign—

“Weight and quality unknown;”

“Quantity and quality unknown;”

“Weight and contents unknown;” *or*

“Number and contents unknown;”

as the case may be; for the captain is not bound to admit on the bill of lading the quantity or quality of the goods he has received.

4th. If the cargo consists of liquid goods, he should add, “Not accountable for leakage;” or if of brittle goods, “Not accountable for breakage,” or “Free of breakage, leakage, and damage.” But even if these words are inserted, the captain will only be protected against such leakage or breakage as may arise from accidental causes, and not from damage occurring from negligence or want of care. If it is wished to protect

the shipowner from liability for negligence, a clear and express statement to that effect should be inserted in the bill of lading.

5th. If any goods have been sent on board by the merchant insecurely packed, or if any of the goods are damaged before they are received on board, the captain should state on the bill of lading the number of packages which are damaged or insecurely packed.

SIGNING BILLS OF LADING.

The bills of lading should be signed as soon as possible after the shipment of the goods; but on receiving the goods, the captain is to give a receipt for them if required to do so, until the bills of lading are made out, and if he does give a receipt for them, he should not sign the bills of lading for those goods until the receipt is returned to him. He should not sign the bills of lading before the goods are received on board, or he may make himself liable for the goods, and never receive them.

The captain ought not to sail without signing, or offering to sign, bills of lading. If there is any dispute about the form or contents of the bill of lading, or if the merchant refuses to allow the captain to insert any words which the captain considers ought to be inserted, he should sign them under protest, thus:—

“Signed under protest,

“J—— W——, Captain.”

If the merchant refuses to allow him to sign in that way, he should consult a notary, or solicitor, who will, on his behalf, make a formal offer to sign the bills of lading under protest. And if necessary, prepare bills of lading

in the captain's interest and deliver same to the merchant, after which the ship can proceed on her voyage.

If, after the lay days are expired, the merchant delays the captain in sailing, by preventing him from signing proper bills of lading, the merchant will be liable to pay demurrage for the detention; but if the captain refuses to sign the bills of lading *without* a sufficient cause, then the consequences will fall on the shipowner, and not on the merchant.

The captain is not bound to sign a bill of lading unless it is properly stamped.

Every bill of lading requires a sixpenny stamp (Stamp Act, 1870), and it must be stamped before it is signed; it cannot be stamped afterwards. Every person signing an unstamped bill of lading is liable to a penalty of £50. This provision of course only applies to documents signed in the United Kingdom. Three of the bills of lading should be stamped, but a copy requires no stamp.

After signing one set of bills of lading, the master cannot be compelled to sign another set unless the former ones are given back to him, or he might become liable to deliver the goods to the holders of both sets.

It is the duty of the shipper to make out the bills of lading according to the charter, and supply a copy to the captain, unless there is some special custom in the particular trade or port to the contrary.

LOADING.

THE charter party generally provides that the ship shall be tight, staunch, and strong, and furnished with all proper necessities, and a sufficient crew, but this is also required by the law, even if there is no charter party. If the ship is in a leaky state, and the cargo be damaged, or the merchant be otherwise injured thereby, the shipowner will be liable to pay damages,

When no time is mentioned within which the ship is to arrive at the place of loading, she must arrive there within a *reasonable* time, and the shipowner is bound to send her there without any unnecessary delay; and the ship must not make any intermediate voyage, or deviate from the direct course to the place of loading (except in case of necessity) without the consent of the charterer.

If any delay occur it will not justify the charterer in refusing to load the ship (unless the charter contains a warranty that she is to be at her place of loading before a certain specified day), but the shipowner will be liable to pay damages for any injury sustained by the merchant in consequence of the delay or deviation.

Should any accident occur, causing delay without the shipowner's fault, while the vessel is on her way to the port of loading, or even if repairs have to be done in consequence of some accident, the merchant still continues bound to load her as soon as she is ready, provided that the charter contains the usual clause exempting the shipowner from liability in respect of accidents.

If a ship be chartered to load at a certain number of ports, the charterer has no right to require the ship to go

to any more ports than the number agreed for; if he does so he is bound to pay all extra expenses caused thereby.

The charterer is bound to load the vessel within such a time as would be considered a reasonable time under ordinary circumstances, after the vessel is ready to receive her cargo (unless some definite time for loading has been named in the charter party). The question of what is a reasonable time will depend on the custom of the port, the nature of the cargo, and other circumstances. The ship will not be considered ready if she is in an unseaworthy state.

BALLAST.

As it is the duty of the shipowner to make the ship fit to undertake the voyage, he is bound to provide ballast when necessary, unless the charter contains any positive agreement to the contrary. In the case of *Irving v. Clegg*, the charter stipulated that the charterer had to furnish a full and complete cargo, and that 100 tons of rice or sugar should be shipped, previous to any other part of the loading, to ballast the vessel; the Court held that this did not compel the merchant to load *sufficient* rice or sugar to ballast the ship, but if any more ballast was necessary beyond the 100 tons, it was to be shipped by the shipowner.

As the duty of supplying ballast is thrown on the shipowner by the *law*, his liability to supply it cannot be controlled or avoided by any alleged custom to the contrary, for no mere custom can be set up to override the law.

If it is necessary to put ballast in the ship as well as cargo, the captain has the right to put in heavy

merchandise instead of ballast, provided that it occupies no more space than ballast would have done, is not injurious to the cargo, and leaves to the charterer the full space of the vessel for the cargo.

DUNNAGE.

The shipowner is bound to supply the depth of dunnage which is customary at the port, for the cargo he is about to take on board (unless the charter says the dunnage is to be provided by the merchant), and the captain should be very particular that proper and firm dunnage is provided, for the shipowner will be liable for all damage which the cargo may sustain by the want of it.

The captain has the right, however, to use merchandise as dunnage, provided that it does not occupy more space than ordinary dunnage, and is equally effective.

STOWAGE OF THE CARGO.

It is the duty of the captain to stow the cargo so that no damage is done to any part of it, either by the motion or leakage of the ship, or otherwise. In the case of *Gillespie v. Thompson*, the cargo consisted of turpentine and flour, and both were properly stowed and dunnaged, but when the cargo was discharged, the flour was found to have been tainted by the turpentine. The shipowner had not been guilty of any negligence (except so far as it may be considered improper to put flour and turpentine in the same vessel), and care was taken to separate the goods from each other. The damage was not caused by turpentine having been in actual contact with the flour, but the fumes from it had tainted the flour, as is

often the case. The plaintiff (the charterer) contended that it was improper stowage to put turpentine in the same vessel with flour, and Lord Campbell delivered judgment in his favour. He said, "The shipowner took the goods in good order, and undertook to deliver them in good order, perils of the sea excepted; they were delivered in bad order, resulting, we think, from improper stowage. There is no doubt the owner of the ship is liable."

The shipowner, however, is only bound to do the best he can; so that if the cargo be damaged accidentally he will not be liable. If the stevedore was appointed by the charterer, and not by the captain, the shipowner will not be liable for any damage, unless the stevedore acted under the control of the captain.

Sometimes, by special custom or agreement, the stowing of the cargo has to be done by the merchant, and sometimes the charter says the charterer's stevedore is to be employed by the ship, which has been held to mean that if the charterer appoints a stevedore, such stevedore must be employed, but if he does not appoint one, then the master is to get the ship properly loaded.

The captain is to supply sufficient ropes, &c., for taking the cargo on board, and the master and owners are responsible for any injury that may occur to the cargo in letting it down into the hold (unless it is stowed by the merchant's stevedore), for as soon as the cargo is received by the master, and it comes under his control, he and his owners are responsible for its safety.

The following instructions to masters and mates of ships, for the stowage of mixed cargoes, have been approved and recommended by the Committee for managing the affairs at Lloyd's:—

INSTRUCTIONS FOR THE STOWAGE OF MIXED CARGOES.

Recommended by Lloyd's Committee.

1. Owners, commanders, and mates of ships are considered in law in the same situation as common carriers; it is therefore necessary that all due precautions be taken to receive and stow cargoes in good order and deliver the same in like good order. The law holds the shipowner liable for the safe custody of the goods when properly and legally received on board in good order, and for the "delivery" to parties producing the bill of lading. The captain's blank bill of lading should be receipted by the warehouse-keeper or person authorised to receive the contents. Goods are not unfrequently sent alongside in a damaged state, and letters of indemnity given to the captain by the shippers for signing in good order and condition; this is nothing more or less than conniving at fraud; fine goods are also often damaged in the ship's hold by lumpers, if permitted to use cotton hooks in handling bales. All goods must be received on board according to the custom of the port where the cargo is to be taken in, and the same custom will regulate the commencement of the responsibility of the master and owners.

2. Hemp, flax, wool, and cotton, should be dunnaged 9 inches on the floors and to the *upper part* of the *bilge*, the wing bales of the second tier kept 6 inches off the side at the lower corner, and 2½ inches at the sides. Sand or damp gravel ballast to be covered with boards. Pumps to be frequently sounded and attended to. *Sharp-bottomed ships one third less dunnage in floor and bilges.* Avoid horn-shavings as dunnage from Calcutta.

3. All corn, wheat, rice, peas, beans, &c., when in bulk to be stowed on a good platform, or dunnage wood, of not less than 10 inches, and in the bilges 14 inches dunnage; the pumps and masts cased, to have strong bulkheads, good shifting boards, with feeders and ventilators, and to have no admixture of other goods. Flat-floored, wall-sided ships should be fitted with bilge pumps. On no consideration must the stanchions under the beams be removed.

4. Oil, wine, spirits, beer, molasses, tar, &c., to be stowed bung up, to have good *cross beds* at the quarter (*and not to trust to hanging beds*), to be well chocked with wood, and allowed to stow three heights of pipes or butts, four heights of puncheons, and six heights

of hogsheads or half-puncheons. All moist goods and liquids, such as salted hides, bales of bacon, butter, lard, grease, castor oil, &c., should not be stowed too near "dry goods," whose nature is to absorb moisture. Shipowners have often to pay heavy damages for leakage in casks of molasses, arising from stowing too many heights without an intervening platform or 'twixt decks. From Bengal, goods are frequently damaged by castor oil.

63 Gallons make	...	...	...	1 Hogshead
84 - - - -	...	...	...	1 Puncheon
126 or 2 hhds.	...	...	...	1 Pipe or butt
252 or 2 pipes	...	...	...	1 Tun

5. Tea, and flour in barrels; flax, clover, and linseed, or rice, in tierces; coffee and cocoa, in bags; should always have 9 inches, at least, good dunnage in the bottom, and 14 to the upper part of the bilges, with 2½ inches at the sides; allowed to stow six heights of tierces, and eight heights of barrels. All ships above 600 tons should have 'twixt decks or platforms laid for these cargoes to ease the pressure—caulked 'twixt decks should have scuppers in the sides, and 2½ inches of dunnage laid athwartship, and not fore and aft-ways, when in bags or sacks; and when in boxes or casks not less than one inch. Rice from Calcutta is not unfrequently damaged by indigo, for want of care in stowing.

6. Entire cargoes of sugar, saltpetre, and guano, in bags, must have the dunnage carefully attended to, as laid down for other goods. Timber ships are better without 'twixt decks, if loading all timber or deals. Brown sugar to be kept separate from white sugar, and both kept from direct contact with saltpetre.

7. Pot and pearl ashes, tobacco, bark, indigo, madders, gum, &c., whether in casks, cases or bales, to be dunnaged in the bottom, and to the upper part of the bilges, at least 9 inches, and 2½ inches at the sides.

8. Miscellaneous goods, such as boxes of cheese, kegs and tubs of lard, or other small or slightly-made packages, not intended for broken stowage, should be stowed by themselves, and dunnaged as other goods.

9. Barrels of provisions and casks of tallow allowed to stow six heights. All metals should be stowed under, and separated from goods liable to be damaged by contact.

10. All manufactured goods, also dry hides, bales of silk, or other valuable articles, should have $2\frac{1}{2}$ inches of dunnage against the side, to preserve a water-course. Bundles of sheet iron, rods, pigs of copper or iron, or any rough, hard substance, should not be allowed to come in contact with bales or bags, or any soft packages liable to be chafed. When mats can be procured, they should be used at the side for silk, tea, &c.

11. Tar, turpentine, rosin, &c., to have flat beds of wood under the quarters, of an inch thick, and allowed to stow six heights.

12. Very frequent and serious loss falls on merchants on the upper part of cargoes, particularly in vessels that bring wheat, corn, tobacco, oil-cake, &c., arising from upper vapour damage imbibed by wheat, flour, and other goods, stowed in the same vessel with turpentine, or other strong-scented articles; the shippers are to blame for such negligence, for not making due inquiry before shipping.

13. Ships laden with full cargoes of coal, bound around Cape Horn or Cape of Good Hope, to be provided with approved ventilators, as a preventive against ignition.

14. No vessel bound on any over-sea voyage should, on any account, be loaded beyond that point of immersion which will present a clear side out of water, when upright, of three inches to every foot depth of hold, measured amidships, from the height of the deck at the side, to the water.

NOTE.—Shippers abroad, when they know that cargoes will be stowed properly, give a preference, and at higher rates, to such commanders of ships as will undertake to guarantee the dunnage. The American shipowners, in the stowage of mixed cargoes in large ships, have, from experience, discovered what "pressure" barrels of flour, casks of provisions, &c., will bear, and so avoid reclamations for damage, if otherwise properly stowed; hence, in large ships above 600 tons, with dimensions exceeding in length $4\frac{1}{2}$ times the beam, and 21 feet depth of hold, orlop decks will come into general use, so as to relieve the pressure, by dividing the ship's hold, like a warehouse, into storeys. A large ship, called the *Liverpool*, which left New York in December, 1854, with an entire cargo of flour, has never since been heard of; it is supposed that the lower tiers of barrels gave way under the pressure, and the cargo having got loose,

shifted in a gale of wind, and capsized the vessel. Ship's cargoes, for insurance, will also become a matter of special agreement between merchant and shipowner, and merchant and underwriters, and the premiums vary according to the dunnage agreement. The stowage and dunnage must stand A1, and is often of more importance than the class of the vessel, as experience has proved. When ships are chartered for a lump sum, the draught of water should be limited, as it not unfrequently happens that brokers insert a clause that coals are not to be considered as dead-weight, in order to fill the ship up in case of goods falling short to make up the chartered freight. All packages, bales, and cases not weighing more than 15 cwt. to the cubic ton measurement, are designated as light freight.

THE CARGO.

It is the duty of the merchant to supply the vessel with the same cargo which has been agreed on by the charter party, and he must supply it in the manner which is customary at the port, or the shipowner will be entitled to recover from him compensation for any damage he may sustain by the non-fulfilment of the charter. In one case where the merchant had agreed to supply a cargo of "tallow, deals, and battens," and the merchant loaded no tallow, but only deals and battens, which paid a less freight than tallow, the shipowner was held to be entitled to damages.

When the charter party stipulates for a cargo consisting of certain specified goods, "and other merchandise," the charterer cannot under the words "other merchandise" claim to load *any* kind of goods, but he is restricted to goods of the same nature as those specified, and paying an average freight with them. Thus, where the cargo had to be "gum, bees-wax, rice, bullion, and other lawful merchandise," the merchant loaded a quantity of lumber, which was the staple commodity of

the port, but it was held that he was bound to pay an amount equal to what the full freight would have been if he had supplied the specified cargo.

If the merchant has unconditionally agreed to load a certain cargo, and it becomes impossible for him to do so, in consequence of some accident over which he has no control, still he is liable to pay damages to the ship-owner for the non-fulfilment of his contract.

The agent of the charterer has not any implied authority as agent to arrange with the ship-master for substituting another voyage, or another cargo, in the place of the voyage or cargo named in a charter made by his principals. To empower him to do so, he should have an express authority to that effect from his principals. If the agent does alter the voyage or cargo without authority, his principal will not be bound by it.

The captain should not take on board more than the vessel is able to carry; and he should not take any contraband goods which may make the vessel liable to forfeiture or detention.

The charterer has no right to put any goods into the cabin, or to load the deck, unless that is specially agreed for, or unless a deck cargo is both lawful and customary. The expression "full cargo" in a charter does not include the cabin or the deck, but only the full range of the ship's hold, from bulkshead to bulkshead.

If freighted for a lump sum, and a deck-load is put on board when not provided for in the charter, extra freight will be payable for it; but deck loads must not be taken during prohibited times; for instance, wood goods on deck to arrive in the United Kingdom between the last day of October and the 16th day of April; or during the times (if any) when they are prohibited by the conditions of the policy by which the ship is insured. The space

occupied by deck cargo is now liable to pay dues as ordinary stowage space of the ship.

If the merchant puts goods into the cabin, the ship-owner will not be bound to accept freight for those goods at the same rate as is mentioned in the charter party; but he will be entitled to the freight at the current rate, or at such other rate as a jury may consider the extra accommodation to be worth.

While the cargo is being loaded, if the ship is in a bar harbour, the captain should see that she is not loaded so deep that she cannot go over the bar. He is not bound to receive any more cargo in port than he can safely leave the port with, at a good tide; and, if necessary, the merchant is bound to load the remainder of the cargo in the roads; but if the captain consents to receive the cargo in port, and then tries to leave, but fails to do so for want of water, the cost of discharging a portion of the cargo, and reloading it from lighters outside the harbour, will fall on the ship, as the merchant is not bound to load the vessel twice.

If the merchant refuses to load a part of the cargo in the roads, when bound to do so, the captain should note a protest when the lay days are expired, and, if necessary, sail home with such cargo as he can safely leave the port with; and the merchant will be liable to pay dead freight for the remainder of the ship's capacity.

The captain, however, would not be justified in insisting on sailing to prevent his being neaped, but he would have to receive in the harbour as much cargo as he could leave the port with at a spring tide, unless an arrangement is made with the merchant to load a part of the cargo outside the harbour to save the tides.

If the merchant has agreed by the charter to supply a full cargo, he is bound to furnish whatever broken

stowage is required to complete a full cargo, unless there is some customary mode of stowage at the port of loading which exempts the merchant from this liability. The shipowner is bound to accept broken stowage to fill up.

If the charter provides for a full cargo, and describes the vessel a little below her actual burthen, still the merchant is bound to supply her with a full cargo, provided the shipowner has not made any wilful misrepresentation of the size of the ship, and the merchant has had the opportunity of seeing the ship to judge for himself. Thus: a ship was described to be of the burthen of 260 tons, but actually she could carry 400 tons. The merchant was held to be bound to supply as many goods as the vessel could carry with safety.

During the loading of the ship an accurate written account should be kept of the quantity of goods put on board—and, in discharging, of the quantity discharged—for use in case there is any dispute with the merchant. In the case of cargoes of grain, or other goods, which are liable to vary in their weight during the voyage, it is especially desirable that the captain should have a correct account (which he or the mate is able to swear to) of the quantity of goods put on board; for the freight will only be payable on the quantity as ascertained at the port of loading, and not on the quantity delivered, if the cargo has increased in bulk during the voyage.

DAMAGED OR DANGEROUS GOODS.

If the captain suspects that the contents of any packages are damaged, he can demand to see the contents; but he is not justified in opening a package, except in the presence of the shipper or his agents.

If the merchant does not load the vessel with the same cargo provided by the charter, or if he load goods which are in a dangerous condition, or in a state which may be prejudicial to the owner's interest, the captain should refuse at the *earliest* opportunity to take such goods. If the merchant persists in loading goods not agreed for by the charter party, the captain should note a protest; or, if during the loading the merchant does anything which he is not justified by the charter in doing, and which may be injurious to the shipowner, the captain should at once send him a written notice, objecting to the irregularity, and stating that unless it is rectified the shipowner will claim damages.

If any goods are sent on board which are insecurely packed, the captain should either refuse to receive them, or state on the bill of lading the number and particulars of packages which are improperly packed.

If the goods are of a dangerous or destructive character; the shipper is bound to inform the captain of their nature, and obtain his leave to send them on board. If he puts them on board without informing the captain of their nature, he will be liable for any damage which they may do. By sections 23 to 28 of the Merchant Shipping Act, 1873, no person is entitled to require the master of any ship to carry any aquafortis, oil of vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum, or other goods of a dangerous nature; and if any person sends by any ship any such goods without distinctly marking their name and nature outside the package containing them, or giving notice in writing to the master of the contents of the package, and the name and address of the carriers or senders thereof, before sending it to be shipped, he incurs a penalty of £100, unless he shows

that he was merely an agent, and did not know that such goods were of a dangerous nature, when the penalty is £10. The master or owner may refuse to take on board any parcels which he suspects to be of a dangerous nature, and he may require the shipper to open them to ascertain the fact. The captain has power to have a suspected parcel opened, to ascertain whether it contains any dangerous articles, but if he does so, he should request the shipper or his agent, if possible, to be present at the time, and if they are found to be dangerous they may be thrown overboard without any liability for so doing.

RE-LANDING THE CARGO.

After the merchant has shipped goods, he has no right to require them to be unshipped until they arrive at their destination, unless he first pays the full freight on the goods and the cost of relanding them, and also returns to the captain all bills of lading he may have signed for such goods, or, at his own expense, gives the captain a proper indemnity (which should be drawn out by the captain's solicitor) against all liabilities on such bills of lading. If this is not done, it is the captain's duty to retain the goods for the benefit of his owner, and to secure the freight which will be due upon them.

The merchant has no right, after the bills of lading have been signed, to change the destination of the goods without the captain's consent; but of course he can indorse the bills of lading, and make them deliverable to some other person; or, if the ship, after commencing her voyage, puts back in consequence of meeting with an accident, by which the goods are damaged so much that they cannot be profitably carried to their destination, then the owner of the goods has a right to have

them delivered back to him on his paying all charges due on them.

BREACH OF AGREEMENT TO LOAD.

As a general rule, if either the merchant or the shipowner has contracted to do anything which it afterwards becomes impossible for him to do, the party in default is liable to pay damages to the other, unless the failure to carry out the contract is caused by some subsequent circumstance which would make it illegal for him to comply with the terms of the contract (for instance, if war is declared with the country to which the vessel was chartered, then the merchant would be absolved from his contract, as it would be illegal for him to trade with an enemy).

If the merchant is not ready at the appointed time to load the vessel, the other party may, at the expiration of the time within which the charterer has undertaken to load the cargo, abandon the charter and seek another cargo, and then the shipowner will be entitled to recover from the merchant damages for the breach of the charter. If there is fear of the ship being frozen up by too long a delay, or if the merchant is insolvent, or may reasonably be suspected of being so, and he has loaded part of the cargo, but neglects or refuses to load the remainder, the captain should not wait an unreasonable time beyond the time stipulated for by the charter party, as he will not have any *lien* on the cargo for the demurrage, unless that is expressly stated both in the charter party and bills of lading, but he will only have a personal claim for it against the merchant. If he does not wait on demurrage he should note a protest, or give a formal notice to the merchant, demanding the remainder of the cargo, and after that he can either him-

self complete the loading of the ship with other goods; or, if they cannot be obtained, he can sail to the port of delivery with such cargo as he has already got, if that appears to him to be the most judicious course to adopt.

If the merchant neglects to load the ship, he cannot be considered to have broken the contract until the end of the lay days, and demurrage days, if such are stipulated for in the charter, unless before that time arrives he positively refuses to carry out his contract; and if such refusal is *acted on* by the shipowner or captain, then the breach of contract by the merchant is rendered complete, and the captain will be at liberty to re-charter the ship and hold the first charterer liable for all consequences. But if the captain, instead of accepting the refusal, continues to demand the cargo after the merchant has refused to supply it, he cannot still consider the charter as broken, but he must then wait till the end of the time stipulated in the charter before he is entitled to re-charter the ship.

If the merchant refuses to load the ship, the captain should get the merchant to state his refusal in writing, or, if this cannot be done, he should note a protest.

DAMAGES PAYABLE FOR BREACH OF CHARTER.

If the charterer does not load the ship according to the charter the amount of damages which the shipowner is entitled to recover is the amount of freight which the ship would have earned if she had been loaded according to the charter, deducting the expense the shipowner would have had to incur in earning the freight, and also deducting the nett profit he has made, if any, by the employment of the ship in the meantime; and the owner

is not justified in keeping his ship idle after breach of contract, but he must accept employment if he can obtain such with safety and profit.

The amount of damages the merchant is entitled by law to recover from the shipowner, in case the latter improperly refuses to carry a cargo which he is bound by the charter party to take, will be the amount of the loss actually sustained by him, and thus the amount will depend upon whether the merchant could obtain another ship to carry the cargo or not. If he could not obtain another ship, the damages will be the amount he has lost by having the cargo left on his hands. If he could obtain another ship, then the shipowner will only be liable for the extra freight, if an increased amount of freight has been paid; but if the new freight is not more than that named in the original charter, then, as the merchant would sustain no loss he can recover no damages (or merely nominal damages) unless the merchant show special damage, as, for instance, that arising directly from the breach of a time contract owing to the default of the shipowner, or any other clear and undoubted damage. If the charter contains a provision that a certain sum is to be paid as the ascertained damages (or "liquidated damages") in case the charter is broken, then the amount so named will be the amount payable. If, however, the amount stated to be payable on non-performance is expressed to be a *penalty*, or is in its amount of a nature evidently intended to operate as a *penalty*, then the merchant can only recover such amount of damage as he can prove he has sustained.

THE VOYAGE.

IF the charter does not fix any time for the commencement of the voyage, it must be commenced with despatch, and within a *reasonable* time, wind and weather permitting, the captain first obtaining the necessary Custom-house clearances for the vessel. If, however, the weather is stormy, it is the duty of the master to wait till the storm abates.

In the case of the "Wilhelm," the master had omitted, during the loading of the ship, to take in sufficient stores and provisions for the voyage; and after the cargo was loaded, while he was engaged in taking on board his provisions, frost set in, which prevented the sailing of the ship for several months, and the shipowner was held liable for all damage caused to the charterer by the delay.

As the ship's register is necessary for the navigation of the ship, the master and owners have an indefeasible right to the possession of it, and the right can only be lost by making a transfer of the ship itself. The owner, and his captain for the time being, can always compel any person who may happen to hold the register to deliver it up, even if it has been pledged with such person as a security for money lent by him; the register itself, therefore, cannot be made a security for money.

DEVIATION.

After commencing the voyage the ship must proceed by the usual and most direct course to her port of dis-

charge without any unnecessary deviation; but notwithstanding any delay in sailing, or deviation during the voyage, the shipowner is still entitled to payment of full freight, without any deduction for delay, and if the merchant has suffered by the delay or deviation, he can recover compensation for the damages he has sustained by bringing an action against the shipowner.

A deviation from the direct course of the voyage can only be justified in case it is necessary for the purpose of doing some necessary repairs to the ship, or to obtain provisions, or for some other lawful cause, such as is justified by the universal usage in the voyage the ship is engaged in, or to assist a vessel in distress, or in pursuance of the express requirements of the charter. But even if the deviation is justifiable, it should be for as short a time and distance as possible.

If the vessel deviates improperly, the underwriters may be relieved from their liability in case of a loss if the ship is insured for the voyage only; and if any goods on board the vessel are captured, lost, or damaged during a deviation, the shipowner will have to make good the loss to the merchant, even if the loss was not caused by the deviation, and the shipowner cannot relieve himself from liability by proving that the same thing would have happened even if he had made no deviation. In the same way, if there is any fall in the market price of the goods composing the cargo, the shipowner will be liable to make good the loss of price sustained by the merchant in consequence of the delay or deviation of the ship.

If the deviation or delay has been so long and unreasonable that it has put an end to the whole object the freighter had in view in chartering the ship, the whole contract may be considered at an end.

If a deviation is made in going to the port of loading,

it does not give the merchant the right to refuse to carry out the charter (unless the delay has been so long as to deprive the merchant of all reasonable benefit of the contract); it only gives him a right to bring a cross action or counter claim for damages.

PILOTAGE.

It is the duty of the captain to employ a pilot on any port where pilotage is usual or compulsory (unless the vessel is exempt from compulsory pilotage), otherwise disputes may arise with the underwriters and owners of the cargo if any damage should occur.

Under the Merchant Shipping Act, 1854, pilotage is compulsory on all vessels carrying passengers between any two places situated in the United Kingdom, the Channel Islands, or the Isle of Man, unless the master or mate of the vessel holds a pilotage certificate applicable for the district.

The following ships are exempt from compulsory pilotage in British ports, under the Pilotage acts and the Trinity House bye-laws, provided they are not carrying passengers between different parts of Great Britain or adjacent islands, and provided they are navigated by the captain and crew without the aid of any *unlicensed* pilot or other person:—

1. British colliers sailing to or from the Thames by the North Channel.
2. British ships trading to Norway, the Cattegat, the Baltic, round the North Cape, or to the White Sea, on their inward and outward voyages to and from the Thames.
3. British ships which are constant traders be-

tween the Thames and the ports situated between the Baltic and Boulogne (inclusive).

4. British ships trading to Ireland, navigating in the Thames and Medway.

5. British ships employed in the regular coasting trade of the United Kingdom, that is trading from one part of the United Kingdom to another,

6. British ships wholly laden with stone from the Channel Islands or the Isle of Man,

7. British ships under the burthen of 60 tons.

8. Ships navigating within the limits of the port to which they belong (unless pilotage is compulsory on such ships under local Acts of Parliament or royal charters relating to those ports).

9. Such foreign ships under 60 tons as may be exempted under any Order of the Privy Council.

10. Ships of which the master or mate is a part-owner, and is resident at Dover, Deal, or the Isle of Thanet, and piloting his own ship from any of those places up or down the Thames or Medway, or to or from any of the Cinque Ports.

11. Ships in distress are entitled to avail themselves of the best assistance they can get at the time.

The Merchant Shipping Act, 1854, also contains the following exemptions from compulsory pilotage in the London district, and the Trinity House outport districts, unless the vessels are carrying passengers* :—

* Under a bye-law made in 1857 by the Trinity House, under the Merchant Shipping Act, and confirmed by an Order in Council, vessels carrying passengers are exempted from compulsory pilotage in the London district, and in the Trinity House outport districts, if the master or mate has a pilotage certificate then in force for such district.

1. Ships employed in the coasting trade of the United Kingdom (*i.e.* vessels habitually engaged in the coasting trade).
2. Ships of not exceeding 60 tons burthen.
3. Ships trading to Boulogne, or to any place in Europe north of Boulogne.*
4. Ships from the Channel Islands laden with stone.
5. Ships navigating within the limits of the port to which they belong.

Under the Merchant Shipping Act, 1862, all ships passing through the limits of a pilotage district on a voyage between two places, both situated out of such district, are exempt from compulsory pilotage, provided that they do not load or discharge at any place within that district, or on some river in such district.

The London pilotage district extends from London Bridge to Orfordness on the north, and Dungeness on the south, and up the Medway as far as Rochester Bridge. The English Channel district extends from Dungeness to the Isle of Wight. The Trinity House outport districts comprise all other pilotage districts, excepting those before named, and those districts for which provision has been made by special Act of Parliament.

The pilotage authorities for the London district, the English Channel district, and the Trinity House outport districts, are the Sub-Commissioners which are appointed for each district by the Trinity House. The

* (This exemption includes vessels on both inward and outward voyages, and it is not restricted to vessels habitually trading to those ports. A ship making a single voyage to those ports will be exempt.)

other districts are regulated by their own Acts of Parliament.

Pilotage is compulsory in the London districts and the Trinity House outport districts, if a pilot can be obtained, unless the ship comes within the foregoing exemptions.

Independent pilotage districts, established under local Acts of Parliament, exist at Liverpool, the Humber, the Bristol Channel, the Tyne, Sunderland, Hartlepool, Cardiff, Newport, Gloucester, Boston, King's Lynn, Berwick, Lancaster, Chester, Llanelly, and Swansea.

Pilotage is not compulsory at the Tyne, Sunderland, Hartlepool, Cardiff, Newport, and Gloucester; but at most of the other ports above-named it is compulsory on all vessels not exempted by their local Acts of Parliament.

In the "English Channel District" it is not compulsory.

A British pilot, if requested by the captain, is bound to produce a copy of so much of the Merchant Shipping Act as relates to pilots, or a copy of the special local act under which he is licensed; and also a copy of the rates, bye-laws, and regulations in force in his own district. Any dispute with him is to be settled by the pilotage authorities.

When pilotage is compulsory, the shipowner is not answerable for any damage occasioned solely by the fault of any qualified pilot in charge of the ship within such pilotage district.

A vessel is only under the direction of the pilot for all the purposes of navigation. It is his duty to direct the *course* she is to pursue, and the speed she is to go. The management, however, of the ship herself is still under the control of the master, and he must promptly carry

out all the pilot's orders ; and if the ship is being towed by a tug, such tug also must obey the pilot's orders.

If the pilot moors the ship in an improper berth, and after he has ceased to have charge of her, she is allowed to remain there, the shipowner is liable for any damage she may do.

The master must not interfere with the pilot, unless he is utterly incompetent from illness, intoxication, &c. ; but, of course, the captain may make suggestions to the pilot, or consult with him, but not in any way to override the authority of the pilot, or so as to make himself responsible for the course or direction of the ship.

ACCIDENTS.

If an accident occurs, and it is necessary to discharge the cargo before the end of the voyage, the master has a right to detain it a reasonable time until the ship is repaired ; but if it is found that it is impossible to repair the ship, so as to enable her to complete the voyage, or if she is not worth repairing, the master has the right to tranship the cargo and send it on by another vessel ; but it has been decided that he is not compelled to send the cargo on. If the captain tranships at a higher rate of freight than is named in his own charter, his owner will have to pay the difference of freight himself, as he cannot charge the higher rate against the merchant. Therefore, the captain should not tranship unless he can send the cargo on for the same or a smaller freight than that named in his own charter. If the merchant *accepts* the cargo at a port short of its destination, he will be liable to pay the freight for it *pro rata*, according to the distance the cargo has been carried ; but if he does not accept the cargo, he

cannot be compelled to pay the freight until it is carried to its destination. He should communicate with the merchant at once, if possible, and obtain his instructions. If this cannot be done, and the cargo cannot be transhipped, the captain should either send it back to the port of loading or leave it safely deposited at the place where it happens to be ; or in case of *urgent* necessity he can sell it, but this should never be done unless there is an absolute necessity to adopt that course, and until the captain has taken the best independent advice he can get on the subject.

The cost of unshipping and reshipping the cargo will generally fall on the insurers of the freight, if the freight is fully insured, but the cost of wages and provisions during the detention are not chargeable to them. If the cargo is transhipped, and the goods are sent on solely for the purpose of earning freight, the extra cost of transshipment beyond the amount of the original freight will fall on the underwriters of the freight.

Lord Tenterden says: "The disposal of the cargo by the master is a matter that requires the utmost caution. He should always bear in mind that it is his duty to convey it to the place of destination, and this purpose he is bound to accomplish by every reasonable and practical method. It is obvious that this purpose cannot possibly be effected by a sale of the whole of the cargo. What then is the master to do if by any disaster he is unable to carry the goods to their destination? To this, as a general question, no answer can be given. Every case must depend on its own peculiar circumstances ; the conduct proper to be adopted with respect to perishable goods will be improper with respect to a cargo not perishable—one

thing may be fit to be done with fish or fruit, and another with timber or iron. One method may be proper in distant regions, another in the vicinity of the merchant; one in a frequented navigation, another in unfrequented shores."

What then is the master to do? In general it may be said that he is to do that which a wise and prudent man will think most conducive to the benefit of all concerned. In doing so he may expect to be safe, because the merchant will not have any just reason to be dissatisfied. Some regard may be allowed to the interest of the ship, and of its owners, but the interest of the cargo must not be sacrificed to it. Transhipment for the place of destination, if it be practicable, is the first object; if that be impracticable, return, or a safe deposit, may be expedient. The merchant should be consulted if possible. A sale is the last thing a master should think of, because it can only be justified by that absolute necessity which supersedes all human laws.

If it is *absolutely necessary* for the captain to have money, for instance, to do repairs necessary for the prosecution of the voyage, and for the benefit of the entire venture, and if the captain cannot obtain it on the credit of the owner, he may either obtain it on bottomry of the ship and cargo, or he may pledge the whole or sell a *part* of the cargo, in order that the remainder may arrive, but he has no right under these circumstances to sell the *whole* or an unreasonable proportion of the cargo, because then no benefit would result to the owner of the cargo, the object of the venture being that at least a considerable portion of the cargo should arrive at its destination. If any part of the cargo is sold by the captain to raise money for the ship's necessities, then on the arrival of the vessel at

her destination, the shipowner will have to pay the merchant the price which the goods sold would have brought at their destination, and then the owner receives freight on the *whole* cargo; but if the merchant prefers it, he has the right to claim the price the goods were actually sold for, and in that case the shipowner is only paid freight on the quantity of cargo actually brought to the port of delivery. In either case the merchant has the right to deduct from the freight the amount due to him for the portion of the cargo which has been sold. If the ship never arrives at her destination, then the merchant has no choice but to accept the amount the goods actually sold for.

In the absence of the owner, or in the absence of means of communicating with the owner, the captain has the power to pledge the owner's personal credit for all things that are *necessary* to conduct the navigation to a successful termination. He may, therefore, borrow money to pay for services which will have to be obtained and paid for in cash, but he has no right to pledge the owner's credit by borrowing money to pay for services which have already been rendered, unless a very strong case of necessity exists. If the captain borrows money to pay for anything which is not necessary, then the owner will not be liable to pay the amount. (See title Bottomry.)

If any damage occurs during the voyage, or if it becomes necessary to put into a harbour for repairs in consequence of any accident, the captain should note a protest if possible within forty-eight hours after he is first able to leave the vessel, but he must not neglect his duty to the ship in times when his services are required at the ship. The protest need not be at once

extended, as that can be done at any time subsequently. He should also get the damage to both ship and cargo surveyed by competent persons, and should send full particulars of the damage to his owners, that they may inform the underwriters and the merchants if necessary. If the ship's bottom is injured by being struck by a sea which strains her, and causes her to make water, the underwriters will be liable; but if she is injured by being struck by a succession of seas, that will be considered mere wear and tear, and will fall on the shipowner, and not on the underwriters.

If there is likely to be any delay, and the surveyors are of opinion that the cargo will spoil by keeping, and they accordingly advise a sale of it, then the captain should advertise a sale by public auction; and when he proceeds on the voyage after his repairs are completed, he should obtain other goods if possible in the place of those he has sold, so as to earn freight.

If any repairs are necessary during the voyage, the captain need not go to any *extraordinary* expense (especially if the ship is at a place where repairs are very expensive) in having the repairs done in an absolutely perfect manner, for that can generally be done better and more cheaply at the end of the voyage. But he must make the ship seaworthy, or the shipowner will be liable to the owners of the cargo for any damage they may sustain in consequence of the ship's unseaworthiness. If the ship becomes unseaworthy after the commencement of the voyage, it is the duty of the shipowner as towards the charterer to repair her if he has the opportunity, or at least not to proceed with the voyage in an unseaworthy state. The captain should have the vessel surveyed by two or more practical men, and obtain a written report from them stating in detail

the repairs which have to be done, and (if such is the fact) that after such repairs she is in a fit state to complete the voyage. The captain should not allow his own judgment to be superseded by any person whose interest it is to advise expensive repairs, and he should not do anything which is not absolutely necessary. It is the duty of the captain to act on his own judgment in ordering repairs, assisted by the advice of such independent practical men of experience and respectability as he may himself consider best able to advise him. Lloyd's surveyors have not any official authority, and he is not bound to follow their directions. If they should recommend repairs which he and the surveyors whom he consults consider unnecessary, it is his duty to act on his own judgment, and do what he considers best for all concerned.

The shipwright who does the repairs will have a *lien* on the ship for the amount of the bill, unless, before he is employed, an agreement is made with him as to how he is to be paid.

The shipowner's liability for repairs rests entirely upon contract, and it must be shown that the captain had express or implied authority to order the repairs.

In ordering the repairs, the captain should not order anything which is not really necessary, merely because he expects the cargo will have to bear its proportion in a general average contribution, for it may turn out that the cargo is not liable to contribute.

If the repairs are only temporary, a statement should be made in the surveys, and protests to the effect that the damage is to be finally surveyed and repaired when the vessel arrives home.

If the cargo has to be landed for the purpose of doing repairs to the ship, it is the duty of the captain to land

it in his own name, on behalf of the shipowner, and keep it till the repairs are finished, and not to return it to the merchant or his agent. The merchant cannot require the cargo to be delivered back after shipment, and if the captain delivers it back, after the ship has met with an accident, he may be unable to borrow money on bottomry to pay for the repairs (as he could then only offer a security on the ship, instead of on the ship, freight and cargo); or if money cannot be borrowed on bottomry, he has power to sell *part* of the cargo to pay for the repairs—an additional reason for not returning it to the merchant. Besides, if the cargo is returned, he may not be able to obtain another cargo in its stead. In one case, a vessel bringing a cargo from Calcutta, sprung a leak shortly after sailing, and had to return to Calcutta for repairs. The cargo was discharged, and delivered back to the shippers, and, after the repairs were completed, the captain was unable to raise money on bottomry of the ship to pay for the repairs, and he was compelled to sell the ship itself.

If repairs are done, the captain is bound to have them executed without any unnecessary delay.

If the cargo will not spoil by keeping, the captain should not tranship, if his own vessel can be repaired within a reasonable time, and he should not sell it, unless compelled to do so by the absolute necessity of raising money which he cannot obtain in any other way, but even then pledging the goods will generally answer the same purpose, instead of selling them. If, however, the cargo is a perishable one, and would be completely spoiled by keeping, the captain should either tranship it, and send it on to its destination, or sell it where it is for the benefit of the merchant. If it would merely deteriorate, and not spoil completely, the

captain should not sell it, but deposit the goods in safe custody in his own name until the merchant orders what is to be done with them. No freight will be payable on any part of the cargo which may be sold by the master.

If in consequence of some accident during the voyage it should become impossible to repair the ship, so as to take the cargo to its destination, and the completion of the voyage has thus become absolutely hopeless, or if the cost of the necessary repairs would exceed the value of the ship after she is repaired, the master should hold a survey, and then, *if the surveyors recommend that course*, he has power to sell the wreck for what it will bring for the benefit of all concerned. But in selling, the captain must act perfectly *bonâ fide*, and before selling he must try by every means in his power to complete the voyage, either—first, by borrowing the money on his owner's credit; second, by bottomry; or third, by selling a *part* of the cargo. If the master, in a case of extreme necessity, sells the ship, the person who purchases her is bound to see that the master is justified in selling, as he may afterwards have to prove that he *was* justified in doing it.

CONSTRUCTIVE TOTAL LOSS.

If the ship is so much damaged that she is not worth repairing, it is a "constructive total loss." If the owner wishes to claim for a constructive total loss, he must give notice of abandonment to the underwriters as soon as he has received certain intelligence of the casualty which renders it improbable that the ship will ultimately be recovered. If the information received by the owner is *doubtful*, he may wait a reasonable time

to enable him, if possible, to obtain more certain information.

If the shipowner abandons to the underwriters, still it is the duty of the master to continue his exertions to save as much as possible, and do the best for all concerned, ~~the same~~ as if no abandonment is made. Anything which he does after the ship is abandoned to the underwriters is considered to be done as agent for them for their benefit.

In writing home to his owners, after any accident, the captain should give full particulars of the damage done, and the chances of getting it repaired, so that they may be able to decide whether they will give notice of abandonment or not. The letters sent home by the captain will have to be produced to the underwriters, to inform them of the position of the ship, and to enable them to decide what course they should take.

See also title "Marine Insurance," *post*.

BOTTOMRY.

In proper cases of necessity, when money is required to enable the ship to complete her voyage, the master has power to borrow money under a bottomry bond, on security of the ship, freight, and cargo. If the money is borrowed as a bottomry loan, the money is only repayable to the lender in case the ship ultimately arrives at her destination. To make himself safe, therefore, the lender should insure. But if the ship deviates from her course during the voyage, then the shipowner is liable to pay the money secured by the bond, even if the ship is lost.

To make the transaction a bottomry loan, it is not necessary that the bond should expressly state that the

money is only to be payable if the voyage terminates successfully; it is sufficient if that appears to be intended. If the instrument expressly states that the money is to be repaid in any event, whether the ship completes her voyage or not, the security will not be considered a bottomry, and the lender will not be entitled to that prior claim on the ship which a regular bottomry bond would have given him.

The master should not give a bottomry bond except in case of absolute necessity; and before borrowing on bottomry, he should endeavour to obtain the money by pledging his owner's personal credit; and it is his duty, also, to endeavour to communicate with his owner, if that can be done.

The person lending money on bottomry is bound to satisfy himself that the money cannot be obtained on the personal credit of the owner, and also that the captain had endeavoured to communicate with the owner, and if it should turn out that proper efforts have not been made by the captain to communicate with the owner by telegraph or otherwise, the lender will not be able to enforce his bond.

If goods have been already supplied on credit, or if repairs have already been done, a valid bottomry bond cannot be given for the cost, after the supply of the goods, or the doing of the repairs, if the ship is then in the possession of the captain, unless the parties had expressly agreed before the goods were supplied, or before the repairs were done, that a bottomry security should be given for the cost.

The holder of a bottomry bond has a first security on the ship, and his claim comes before the mortgagee and all other creditors, excepting the seamen's claim for wages earned after the bottomry, and subsequent sal-

vage services. A later bottomry bond has priority over an earlier one, as the money lent on the second bond assists the vessel to complete her voyage, and thus prevents the holder of the first bond from losing his claim.

At the end of the voyage the holder of a bottomry bond is bound to endeavour first to obtain his money from the ship, and, if that is insufficient (but not otherwise), he can then look for payment to the cargo, if that has been secured to him by the bond.

The holder of the bond should enforce it within a reasonable time after it becomes due, or he may lose his right to priority over other creditors.

SALVAGE.

Sir John Nicholl has defined the ingredients of a salvage service to be—

1st. Enterprise in the salvors in going out in tempestuous weather to assist a vessel in distress, risking their own lives in order to save their fellow-creatures, and to rescue the property of their fellow-subjects.

2nd. The danger and distress from which the property is rescued is to be considered; whether it was in imminent peril, and almost certain to be lost, if not at the time rescued and preserved.

3rd. The degree of labour and skill which the salvors incur and display, and the time occupied, is to be taken into account.

Lastly. The value of the property saved. Where all these circumstances concur, a large and liberal reward is given; but where there are none, or scarcely any, of those circumstances, the service can hardly be deemed

a salvage service, and remuneration for ordinary work and labour only will be due to the parties.

No salvage remuneration is payable unless the services have been successful in saving the property.

The salvors must not misconduct themselves by exposing the property to unnecessary risk, or they will forfeit their claim.

A salvor must be a volunteer, who is not under any obligation to perform the service; and for this reason, the crew of the ship saved cannot claim to be paid as salvors, for it is their duty to do all in their power to save her, so long as their contract for service in the ship lasts. For the same reason, a passenger cannot be a salvor unless the services are very extraordinary and meritorious.

The salvage service must be performed personally, and not by an agent; but the owner of a salving ship is entitled to a share of the salvage reward if his vessel has been in any risk.

If one set of salvors are engaged with a vessel, and they are competent to save her, they have the right to reject the services of a second set of salvors. But if the first set are unable by themselves to save the ship, they must not refuse further assistance, or they may thereby forfeit their claim to salvage. In case of a derelict ship, however, if one set are in possession, then, as no further services are needed, a second set have no right to interfere.

The salvors may be dismissed by the master or owner of the ship when their services are no longer considered necessary (unless the ship was derelict), but they are entitled to be paid for the services rendered by them before dismissal, and also for such services as it is found they could have further rendered if they had not been so dismissed.

By the Merchant Shipping Act, 1854, sec. 458, it is enacted that "a reasonable amount of salvage shall be paid to salvors, together with all expenses properly incurred by them." If the services are performed by steamers, they are always liberally rewarded, as their services are generally very valuable.

In assessing the amount of salvage payable, the total value of the ship, freight, and cargo, is to be reckoned as the amount of the property saved, and the compensation payable is divided between the owners of those three items, according to the value of their several interests.

It may be stated generally, that where a boat or vessel is found at sea, deserted and abandoned by the master and crew, without the hope or intention of returning and recovering possession, she is in the sense of the law derelict; and goods abandoned in the same way, whether found floating or cast ashore, are derelict. But where the master or crew abandon vessel, boat, or goods temporarily, with an intent or hope to return, they are not considered legal derelicts.

In case of derelict, the amount awarded generally varies from about one-third to one-half the value of the property saved; in other cases it varies according to circumstances, but never more than half the value is allowed.

If a special and distinct agreement has been made as to the amount which is to be payable for the services then that amount only can be claimed, and not salvage, provided the agreement was a fair one. The parties must also have had a clear understanding of the nature of the agreement, and it must be for a certain stated sum, otherwise it will not be binding on the salvors. The sum agreed upon must not be grossly exorbitant, showing that the salvors have used the misfortune of the ship in

distress to exact a species of black mail, or the agreement can be set aside by the Court of Admiralty.

Salvors have a lien on the ship or property saved, and can, therefore, retain possession of it till they are paid for their services. By the Merchant Shipping Act, 1854, the receiver of wreck (generally the collector of customs) at each port is authorised to detain a ship on which a salvage claim is made till the amount is paid, or a bail bond is executed for her release.

If the amount claimed for salvage does not exceed £300, the County Courts have jurisdiction to decide the matter. If the value of the property saved does not exceed £1000, or if the sum claimed does not exceed £200, two magistrates have also jurisdiction. In Scotland a similar jurisdiction has been conferred on the sheriffs, and in Ireland on the recorders of boroughs, and chairmen of quarter sessions in counties. If the sum claimed before magistrates, sheriffs, or recorders, or the sum awarded by the County Court, exceeds £50, there is a right of appeal to the Admiralty Court.

CALLING FOR ORDERS.

The port or ports to which the vessel is bound outward, must be named before sailing, and the shipowner is not bound to take a supercargo in the ship to decide, after the vessel sails, which port she is to go to, unless a special agreement to that effect has been made by the charter, or otherwise. The port of discharge for a *home-ward* voyage, however, is frequently not to be named until the vessel arrives at some port of call. If the charter provides that the master is to call at a certain port or ports for orders, he is bound to call there, and to put himself in communication with the parties to whom

the merchant has referred him at such port or ports ; but he is not bound to call at any port for orders unless there is a stipulation to that effect in the charter. If the charter does not name any port of call, but only says the ship is to proceed to a safe port, then the charterer is bound to name the port of discharge before the vessel sails. If there are no orders ready for him at the port of call, the captain is not *obliged* to apply by letter or telegraph to the merchant (although it may often be *advisable* for him to do so); but if no orders come for him, he has the right, after waiting a reasonable time for the order, to sail for any one of the several ports to which the merchant might have ordered him under the charter. If, however, there is anything in the charter which gives a preference to one port over the others, he should go to that port, if no orders come for him to go elsewhere.

If the port of discharge is to be a "safe port," then the port must not only be one safe in situation, depth of water, &c., and into which the ship can enter and discharge her cargo in physical safety, and without danger of doing herself any damage by lying aground, but it must also be a port then open for commerce. If the Government of the country has prohibited vessels from entering it without permission, it is not a safe port, as the vessel would be liable to be confiscated if she entered without permission.

COLLISION.

It has been said by Lord Stowell that there are four possibilities under which a collision may occur:—

1st. It may happen without blame being imputable to either party, as where the loss is occasioned by a storm, &c., or by inevitable accident which ordinary skill and caution could not have prevented. In that case the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree.

2nd. It may happen by the misconduct of the suffering party only, and then the rule is, that the sufferer must bear the whole loss himself.

3rd. It may have been the fault of the ship which ran the other down; and in this case the innocent party is entitled to entire compensation from the other.

Lastly. It may arise where *both* parties are to blame, where there has been a want of diligence or skill on both sides. In such a case, in the Court of Admiralty, the loss is apportioned equally between them. Until the Supreme Court of Judicature Act, 1873, this rule did not apply to the Common Law Courts, which held that if the party seeking redress is in anywise the author of his own wrong, he must bear the consequences to himself. However, by sec. 25, sub-sec. 9, of that Act, it is provided that, in ANY cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found in fault, the Admiralty rule before mentioned shall apply.

If the plaintiff has been guilty of negligence which

was only *remotely* connected with the accident, and not the *direct* cause of it, that fact will not relieve the defendant from his duty to use ordinary care, the want of which was the direct cause of the accident; and if such want of care was the cause of the accident, the plaintiff will be entitled to recover damages, although he may have been guilty of negligence in some collateral matter only remotely connected with the accident. A man is not at liberty to cast himself on an obstruction which has been made by the fault of another. He must use ordinary caution and diligence in taking care of himself; and if that diligence is wanting, he will be liable for the damages caused by his neglect.

If a collision is altogether accidental, and not the fault of either party, or if it is caused solely by the fault of the *other* ship, in these cases the loss is considered to be a peril of the sea, and the underwriters will be liable to make it good.

A ship doing damage is, by law, considered to be under the management and control of the servants of her registered owners, unless the contrary is shown. The party doing damage is liable to pay the whole cost of repairs without deducting one-third new for old; that deduction is only made when compensation for damage is made by underwriters.

It is the imperative duty of those in charge of ships to keep a good look-out, and particularly in thick weather, or in places where there are many dangers to be avoided; and the same remarks generally apply to the speed of a ship. The men entrusted with the navigation of a ship should know these duties and be able to perform them.

In every case of collision the master shall (under penalty), when practicable, immediately after the occur-

rence, cause a statement of the facts and circumstances to be entered in the official log-book (if any), and such entry shall be signed by the master and the mate or one of the crew.

By sec. 16 of the Merchant Shipping Act, 1873, it is made the duty (in case of collision) of the master of each vessel, if possible, to assist the other vessel, having regard first to the safety of his own vessel, crew, or passengers, also to give the other captain or person in charge of the other vessel the name of his own vessel and of her port of registry, or of the port or place to which she belongs, and also the particulars of the voyage she is making. If the master fails to do so without reasonable cause, the collision shall, in the absence of proof to the contrary, be deemed to be owing to his neglect or default, and he is guilty of a misdemeanour. An inquiry may be held into his conduct, and his certificate may be cancelled or suspended.

LIMITATION OF SHIPOWNER'S LIABILITY.

By sec. 388 of the Merchant Shipping Act, the shipowner is relieved from responsibility for all damage caused by the fault or incapacity of any qualified pilot in charge of the ship within any district where the employment of such pilot is compulsory by law.

To relieve the shipowner from liability, the pilotage must not only be compulsory on the shipowner, but the pilot must have been *solely* to blame; if the damage was caused by the insufficiency of the ship or her equipments, or by the incompetence of the crew, or by their not obeying the pilot's orders, or if the crew were partly to blame, the shipowner will be liable although a pilot were on board. If the pilotage is not

compulsory, the owner will be liable for all damage, even if it is caused by the fault of the pilot.

On the same principle the shipowner is not liable for damage caused by the fault of harbour-masters, when the ship is bound to obey their directions, but the burthen of proving that the damage occurred from the pilot's or harbour-master's fault lies on the shipowner.

By the Merchant Shipping Act, 1862, it is provided that the shipowner's liability for damage in respect of personal injury or loss of life (either with or without damage to ship or goods) be restricted to £15 for each ton of the ship's register, and to £8 a ton for damage to ship or goods (either with or without loss of life or personal injury), if such damages respectively occur without the shipowner's actual fault in privity. In the case of sailing ships, the amount is to be calculated on the register tonnage, and in the case of steam-vessels on the gross tonnage without deduction on account of engine room.

If several losses occur at one time, the shipowner only incurs one total liability, restricted to the above amount, but if two losses occur on distinct occasions, the shipowner is liable to the above extent for each occasion.

If one claimant sues and obtains a judgment before the others commence their suit, he thereby secures priority over the other claimants.

Where any liability has been incurred by reason of loss of life or personal injury, the Board of Trade may institute proceedings before a jury, which may award £30 damages in either case. No action can be brought by any injured or aggrieved individual until the Board of Trade has instituted these proceedings or declined to

do so, or neglected to do so for the space of one month after service of a notice to proceed.

If several claims are made which exceed the total amount for which the shipowner is liable, and which cannot otherwise be adjusted, the shipowner has the right to apply to the Court of Chancery to apportion the amount between the claimants.

THE RULE OF THE ROAD AT SEA.

The Merchant Shipping Act, 1862, contains rules for the prevention of collisions at sea, which are now accepted by nearly all maritime nations, and may be generally stated as follows :—

WHEN BOTH SHIPS HAVE THE WIND FREE.

Ships meeting end on.—When two vessels are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both must be put to port.

Ships crossing.—If two ships, both having the wind free, are crossing each other's course (and not meeting end on), then, if they have the *wind on different sides*, the ship with the wind on the port side is to keep out of the way of the ship with the wind on the starboard side by going astern of her ; to do so the helm must be put to starboard, if necessary ; the other ship must keep her course. But if both ships have the *wind on the same side*, or if one of them has the wind aft, then the ship to windward is to keep out of the way of the ship which is to leeward.

WHEN ONE OF THE SHIPS IS CLOSE-HAULED.

Ships meeting end on.—If the vessels are meeting end on, or nearly end on, one of them being close-hauled

and the other going free, the ship which has the wind free must make way for the close-hauled ship by porting her helm, and the close-hauled ship—if meeting *end on*—must also port her helm, if it can be done without putting the vessel out of command.

Ships crossing.—If the vessels are crossing (and not meeting end on), then the ship which has the wind free is to make way for the other by going astern of her, and to do this the vessel with the wind free may have to put her helm to starboard if necessary. The vessel which is close-hauled is to keep her course; but if close-hauled on the port tack and there is the slightest *doubt* whether the other ship is going free or not, the ship on the port tack should port her helm. A ship on the *starboard* tack is entitled to keep her course, but if meeting another vessel *end on* she must go as near the wind as possible.

Ships under steam are always considered as going free, and are, therefore, bound to keep out of the way of sailing ships.

WHEN BOTH SHIPS ARE CLOSE-HAULED.

If both ships are close-hauled, then the ship which is on the port tack must port her helm and give way to the ship which is on the starboard tack, and the ship which is on the starboard tack must keep her course, but if meeting the other ship *end on* she is bound to go as near to the wind as it is possible to go without getting the ship out of command.

A ship is “end on, or nearly end on,” when each ship sees the masts of the other nearly in a line with her own, or when both side lights of the other ship are seen right ahead.

It may sometimes be necessary, under very special circumstances, to depart from these rules in cases of immediate danger; for instance, if the vessels are so close that a collision cannot possibly be prevented, then in order to ease the blow, it is allowable at the last moment to put the helm to starboard, or if the ship would run ashore by porting her helm, then she is not bound to do so.

Whenever the helm is to be altered, everything else must be done to the sails, &c., which is necessary to make the ship answer her helm:

STEAM SHIPS.

A vessel under steam is bound always to give way to a sailing vessel.

If two ships under steam are meeting end on, the helms of both are to be put to port. (Rule 13.)

If they are crossing, the ship which has the other on her starboard side is to keep out of the way of the other. (Rule 14.)

Every steam ship is bound to slacken her speed, or, if necessary, stop and reverse, if a collision is probable. (Rule 16.)

In a fog she must go at a moderate speed. (Rule 16.)

In considering what is a justifiable rate of speed, reference must be had to the state of the atmosphere, the locality, and the sea-room.

A steamer which is under sail only and not under steam is considered a sailing ship. (Rule 1.)

Steam ships towing other vessels are not specially mentioned in these rules, but it has been held that they are not to be subject to the rules so strictly as steam ships which are going free.

BOARD OF TRADE RULES.

The following is a copy of the rules contained in the Merchant Shipping Act, 1862, and since issued by the Board of Trade :—*

PRELIMINARY.

1. In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship ; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.

RULES CONCERNING LIGHTS.

2. The lights mentioned in the following articles, numbered 3, 4 5, 6, 7, 8, and 9, and no others, shall be carried in, all weathers, from sunset to sunrise.

3. *Lights for Steam Ships.*—Seagoing steam ships, when under weigh, shall carry :—(a.) *At the foremast head*, a bright white light, so fixed as to show an uniform and unbroken light over an arc of the horizon of 20 points of the compass, so fixed as to throw the light 10 points on each side of the ship, viz., from right ahead to 2 points abaft the beam on either side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles : (b.) *On the starboard side*, a green light so constructed as to throw an uniform and unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to 2 points abaft the beam on the starboard

* These rules are binding on all British vessels, and all foreign vessels navigating in British waters, and also on all foreign vessels belonging to States which have adopted the rules, in whatever waters they may be sailing. The rules have now been adopted by the following countries :—Austria, Argentine Republic, Belgium, Brazil, Chili, Denmark, Republic of the Equator, France, Great Britain, German Empire, Greece, The Hawaiian Islands, Hayti, Italy, Morocco, The Netherlands, Norway, Peru, Portugal, Russia, Spain, Sweden, Turkey, The United States, and Uruguay.

side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles; (c.) *On the port side*, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to 2 points abaft the beam on the port side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles: (d.) The said green and red side lights shall be fitted with inboard screens, projecting at least 3 feet forward from the light, so as to prevent these lights from being seen across the bow.

4. *Lights for Steam Tugs*.—Steam ships, when towing other ships, shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam ships. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam ships are required to carry.

5. *Lights for Sailing Ships*.—Sailing ships under weigh, or being towed, shall carry the same lights as steam ships under weigh, with the exception of the white mast-head lights, which they shall never carry.

6. *Exceptional Lights for Small Sailing Vessels*.—Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent a collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

7. *Lights for Ships at Anchor*.—Ships, whether steam ship, or sailing ships, when at anchor in roadsteads or fairways, shall exhibit, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light in a globular lantern of 8 inches in diameter, and so constructed as to show a clear, uniform, and unbroken light, visible all round the horizon, and at a distance of at least one mile.

8. *Lights for Pilot Vessels*.—Sailing pilot vessels shall not carry

the lights required for other sailing vessels, but shall carry a white light at the mast head, visible all round the horizon and shall also exhibit a flare-up light every fifteen minutes.

9. *Lights for Fishing Vessels and Boats.*—Open fishing boats and other open boats shall not be required to carry the side lights required for other vessels, but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side, and on the approach of or to other vessels such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient.

RULES CONCERNING FOG SIGNALS.

10. Whenever there is fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes, viz. :—

(a.) Steam ships under weigh shall use a steam whistle placed before the funnel, and not less than 8 feet from the deck.

(b.) Sailing ships under weigh shall use a fog horn.

(c.) Steam ships and sailing ships when not under weigh shall use a bell.

STEERING AND SAILING RULES.

11. *Two Sailing Ships Meeting.*—If two sailing ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other (see note* on next page).

12. *Two Sailing Ships Crossing.*—When two sailing ships are crossing so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side, except in the case in which the ship with the wind on the port side is close hauled and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.

13. *Two Ships under Steam Meeting.*—If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.*

14. *Two Ships under Steam Crossing.*—If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

15. *Sailing Ship and Ship under Steam.*—If two ships, one of which is a sailing ship and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

* The following explanation of Rules 11 and 13 were issued in August, 1868:—

Whereas there has been doubt and misapprehension concerning the effect of the two Articles 11 and 13: Her Majesty, by virtue of the powers vested in her, and by and with the advice of Her Privy Council, is pleased to make the following additions to the said Regulations by way of explanation of the two recited articles; that is to say:—

The said two Articles, numbered 11 and 13 respectively, only apply to cases where ships are meeting end on, or nearly end on, in such a manner as to involve risk of collision. They, consequently, do not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases in which the said two Articles apply are, when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which, *by day*, each ship sees the masts of the other in a line, or nearly in a line, with her own; and, *by night*, to cases in which each ship is in such a position as to see both the side-lights of the other.

The said two Articles do not apply, *by day*, to cases in which a ship sees another *a-head* crossing her own course; or, *by night*, to cases where the red light of one ship is opposed to the red light of the other; or where the green light of one ship is opposed to the green light of the other; or where a red light without a green light, or a green light without a red light, is seen *a-head*; or where both green and red lights are seen anywhere but *a-head*.

16. *Ships under Steam to Slacken Speed.*—Every steam ship, when approaching another ship, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam ship shall, when in a fog, go at a moderate speed.

17. *Vessels Overtaking other Vessels.*—Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

18. *Construction of Rules 12, 14, 15, and 17.*—Where by the above rules one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the following article.

19. *Proviso to Save Special Cases.*—In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

20. *No Ship, under any Circumstances, to Neglect Proper Precautions.*—Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

The result of these rules is that—

When *both* red and green lights are seen right ahead, another vessel must be approaching in an exactly opposite direction, thus—



If the *red light only* is seen, then either a vessel is approaching on the port bow, thus—



or is crossing in some direction to port, thus—



If the *green light only* is seen, then either a vessel is approaching on the starboard bow, thus—



or else a vessel is crossing in some direction to starboard, thus—



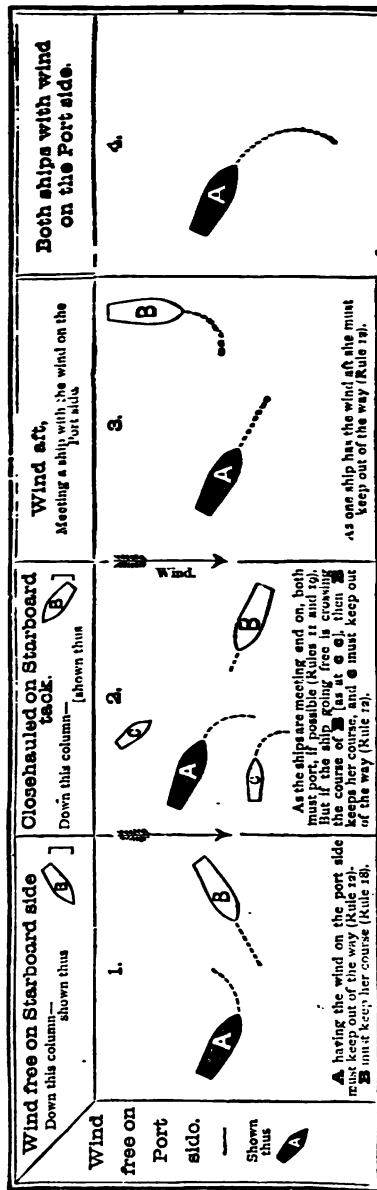
and if, in any of the above cases a white light is also seen above the coloured lights, then the vessel must be a steamer.

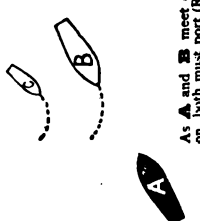
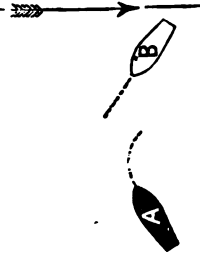
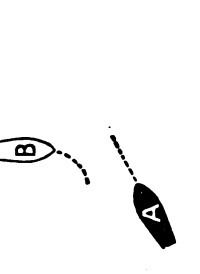
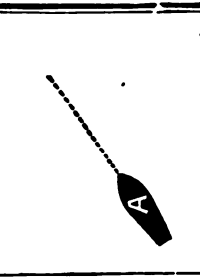
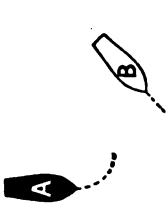
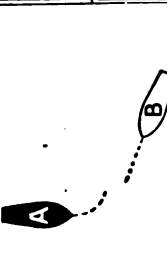
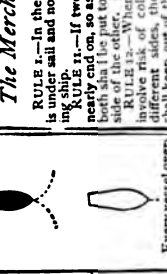
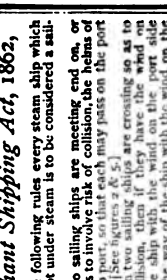
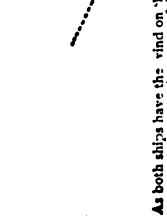
COLLISION DIAGRAM, ILLUSTRATING THE STEERING AND SAILING RULES UNDER THE MERCHANT SHIPPING ACT 1862,

And showing at a Glance, by Plans arranged in a Tabular Form, the only Positions in which it is possible for Two Ships to approach each other with Danger of Collision in any State of the Wind;

And showing also the Course to be taken by each Ship under the Merchant Shipping Act 1862 to avoid Collision.

N.B.—The Ships are supposed to be Sailing Vessels, and the Wind is, in each case, supposed to be blowing from the top of the Sheet.



<p>Close-hauled on the Port tack — Shown thus</p> 	<p>6. As A and B meet end on, both must keep port (Rule 17). If the ship going free is crossing (as at c), then A keeps her course (Rule 12), and B makes way for her.</p>	<p>7. Both ships being close-hauled, A the ship on the port tack must keep out of the way (Rule 12). B must keep her course.</p> 	<p>8. As one of the ships has the wind aft, she must keep out of the way (Rule 12).</p> 	<p>9. As both ships have the wind on the same side, the ship to windward must keep out of the way (Rule 12).</p> 
<p>Wind aft meeting a ship with the Wind on the Starboard side.</p> 	<p>8. A having the wind aft must keep out of the way of B. (Rule 12). B must keep her course (Rule 18).</p>	<p>9. Both ships being close-hauled, A the ship on the port tack must keep out of the way (Rule 12). B must keep her course.</p> 	<p>10. Every vessel overtaking another vessel shall keep out of the way (Rule 17).</p> 	<p>11. As both ships have the wind on the same side, the ship which is to windward must keep out of the way of the other (Rule 12).</p> 
<p>Both ships with Wind on the Starboard side.</p> 	<p>11. Both ships with Wind on the Starboard side.</p>	<p>12. Both ships with Wind on the Starboard side.</p>	<p>13. Both ships with Wind on the Starboard side.</p>	<p>14. Both ships with Wind on the Starboard side.</p>

NOTES ON THE FOREGOING REGULATIONS.

The regulations have been held to apply to sea-going vessels only, and not to barges which navigate only in rivers; but they apply to steam tugs, whether towing vessels or not.

When there has been a breach of the regulations, and a collision has occurred, it is to be considered to have been caused by the non-observance of the regulations, unless the contrary is clearly proved. If a vessel takes advantage of rule 19, and a collision occurs notwithstanding, she will have to show that the departure from the rule was necessary to avoid immediate danger, and also that the course she adopted was reasonably calculated to avoid that danger.

The fact of the moon being full and bright is no excuse for not carrying the lights. If the lights are damaged by the sea, they should be replaced as soon as possible, and in the meantime a light of some sort should be shown.

It has been decided that, when a ship is seen at a considerable distance, the helm should not be ported at once, neither should there be any undue delay; but the probable course of the other vessel is to be observed and, then the helm must be altered, if necessary, without further delay.

It has been decided in the celebrated "Franconia" case, that a vessel is overtaking another vessel within the meaning of rules 16 & 17 before mentioned, and not crossing within the meaning of rule 14, when she is going faster than the other vessel and is so much behind her as to be unable to see either of the side lights of such other vessel.

The expression "keep out of the way" used in the foregoing regulations has been held to mean, as a general rule, going astern of the other ship, but under some circumstances it is otherwise.

In all cases of *doubt* the safer course is to port the helm.

STOPPAGE IN TRANSITU.

IF the consignee has obtained the goods or cargo on credit, and he become bankrupt or insolvent* before the goods are delivered to him, the consignor, although he may have parted with the possession of the goods to the shipowner, can stop their delivery, and retake them at any time before they are actually delivered to the consignee, unless the consignee has sold them to a third party, who has no notice of any irregularity, and has paid cash for them, *bonâ fide*.

But if the bill of lading is stolen from the consignor, or appropriated without his authority, and it is afterwards indorsed over, then the right of the consignor will not be defeated, even if the indorsee acts *bonâ fide*, and pays value for the goods.

The right to stop the goods can be exercised, not only if the whole, but also if a part only, of the purchase-money remains unpaid, and it may be exercised if the goods were sold on credit, and the term of credit has not expired, and even if the vendor has taken a bill of exchange in payment for them, and negotiated it.

The right to stop can only be exercised by or on behalf of the consignor of the goods. The consignor, or an agent properly authorised by him, may give notice to the captain or other person who has the immediate custody of the goods not to deliver them to the consignee, and the captain is then bound to deliver them to the consignor, or his nominee, unless he is aware of

* By insolvency is meant merely a general (but certain) inability to pay debts, though there may not be actual bankruptcy.

some fact which defeats the consignor's right to stop the goods *in transitu*. If the notice is given by the consignor to the shipowner, he is bound at once to write and inform his captain of it.

If more persons than one claim the goods, the captain should, before delivering them, obtain from the claimant to whom he proposes to deliver the goods a proper indemnity against all other claims, or, if that is refused, the captain can protect himself by an interpleader summons.

If the consignor stops the goods, he can only hold them until the balance due to him is paid, and he cannot sell them unless the consignee (or his trustee, if he has become bankrupt) refuse to take them, and pay the price.

The right to stop *in transitu* depends on three conditions:—

1. The vendor must be unpaid.
2. The vendee must be insolvent.
3. The vendee must not have indorsed over the bill of lading for value to an innocent third party, or obtained actual or constructive possession of the goods.

END OF THE VOYAGE.

ON the arrival of the vessel at her destination, it is the duty of the captain to have her safely moored in a place appropriate to the vessel, and to the trade she is in, or if the charter states that she is to go to any particular part of the harbour, then she must proceed to the place which has been agreed on. But the captain and consignee may agree between themselves for the delivery of the cargo at any particular place, in the same port, different from the place (if any) named in the charter.

If the charter does not specify any particular part of the harbour at which the ship is to discharge, and there happens to be more than one place in the harbour where such cargoes are habitually discharged, the master is bound to take his ship to whichever of such places of discharge the merchant orders him to. The master, however, is justified in going in the first instance to any one of the usual places for discharging such a cargo as he has on board; but if the consignee, on being informed of the ship's arrival, requires the captain to move his ship to one of the other places of discharge, the captain is bound to do so. The captain is entitled to be paid the expenses incurred in mooring the ship at the place he first goes to; but he is not justified in refusing to move the ship until after he is paid; he is bound to move the ship, and should make his claim for the expenses afterwards.

If it is impossible for the ship to reach the place of discharge at *any* tide, without first having part of her cargo unloaded to lighten her, then the merchant is

liable to pay for all delay caused by the lightening of the ship. The merchant has the right, if he wishes to do so, to unload a reasonable part of the cargo outside the harbour at his own expense, to enable the ship to enter the port.

As soon as the ship arrives at her port of discharge she should be entered at the custom-house.

It is the duty of the captain to prepare without delay to deliver the cargo, but he is not *bound* to give a notice to the merchant that the ship is ready to discharge, although it is very desirable that he should do so. It is the duty of the merchant to watch for the arrival of the ship.

Before commencing to unload, the captain should see the bill of lading held by the person claiming the cargo, and that it is properly indorsed. It would be well for the captain to make on the back of his own copy of the bill of lading a copy of all indorsements (if any) which are on the back of the bill of lading which is produced to him. The master is not bound to deliver the cargo unless the bill of lading is produced by the person claiming the cargo. If the consignee cannot produce the bill of lading, the captain is however justified in delivering the cargo to him if he gives a proper indemnity to save the captain harmless against all other claims, and such consignee is a substantial and respectable person. (See form in the Appendix.)

If the bills of lading are presented to the master by two different claimants of the cargo, he is justified in delivering the cargo to the person who first presents a properly indorsed bill of lading. It is not the master's duty to inquire or decide who has the best right, but he should, if possible, get an indemnity from the claimant to whom he delivers the cargo, agreeing to protect

him against all other claims. (See form in the Appendix.)

If the ship has met with heavy weather, and the captain suspects the cargo to be damaged, he should have the hatches, cargo, and damage properly surveyed by practical men, and obtain a written report from them before interfering with the cargo, and he should note a protest at the earliest opportunity.

FOUL BERTHS.

The captain is not bound to take his vessel to a place which is not safe and convenient, and where her safety would be imperilled, and if a dock company or harbour commissioners, or their officers, place a ship in a berth where the ground is uneven, and not in a proper condition to receive vessels, they are liable to make good all damage which may be caused by the bad berth.

If one vessel gives another a foul berth, whereby damage is caused, the owners of the vessel at fault are liable to an action for the amount of the damage, unless the ship has been moored under the direction of the harbour-master or his deputy, and then she is released from all responsibility for the consequences, if any damage occurs from her being moored in an improper place.

DELIVERY OF THE CARGO.

THE shipowner or captain is not bound to give notice to the consignee of the arrival of the ship (unless that has been agreed in the charter); but the consignee is bound to watch for the arrival of the ship, and be ready within a reasonable time after her arrival to unload her. If, however, the captain is aware of the name and address of the consignee, it is as well for him to give notice as soon as he reasonably can of his arrival.

If the ship is to discharge at a certain place, "or so near thereto as she may safely get," that means so near as she can safely get, unless she is prevented by some permanent obstruction. If the ship can get to the place named at a suitable tide, she will have to wait till the tide suits without receiving any demurrage, and the lay days will not begin to run till she arrives at the place named.

If the charter requires the ship to unload *at* a wharf, that has been held to mean *alongside* the wharf, and the ship may have to wait until the tide suits before the lay days begin.

The consignee, however, has not a right to order the ship to discharge at any place, excepting the usual and customary places of discharge in the port, unless otherwise stipulated in the charter, or at a place which can only be reached during a few days in each year. The consignee is entitled to have a reasonable time allowed him to receive the goods from the ship's side, unless there is some custom, or some express agreement in the bill of lading, to the contrary, and he is bound to receive

it according to the custom of the port and the usage of the trade.

If it is necessary to discharge the cargo into lighters, it is the duty of the consignee to send the lighters. In London, by the custom of the port, if the cargo is discharged into lighters, the captain is bound to take care of the goods till the lighter is filled, and after that it is at the risk of the consignee, if it is he who provides the lighters. But if the lighters are employed and paid for by the shipowner, then he will be responsible to the consignee for any damage which may occur to the cargo on its road from the ship to the shore, and the lighter-man is responsible to the person who employs him for all damage the goods may sustain while they are under his charge. Lightermen are subject to all the same responsibilities as common carriers.

As the captain has a lien on the cargo for the amount of the freight, he should, before delivering up the whole of the cargo, obtain payment of the freight, if it has to be paid in cash, or if it is to be paid by bill, he should get a proper bill, according to charter.

If the captain has signed bills of lading, acknowledging the receipt of goods which were never shipped, his owners will not be bound by that; they will only be responsible to the consignee for such goods as have been actually put on board, as the captain has no implied authority from the owners to sign for more goods than he actually receives. But the quantity named in the bill of lading is conclusive against the captain (personally) who signs the bill of lading, unless the holder or consignee had actual notice at the time he received the bill of lading that the goods had not, in fact, been put on board. But the master may exonerate himself from this liability if he can show that

the error was caused by the fraud of either the shipper or the consignee. The captain should get an accurate receipt for all goods delivered, and have an exact account kept of all goods put out of the ship.

If any general average contribution is due from the cargo the captain has also a lien on the cargo for that amount, and if the parties are beyond the jurisdiction of the English Courts, or in insolvent, or doubtful, circumstances, he should get it paid in cash, if possible. If the average cannot be at once adjusted, and therefore cannot be paid in cash, the captain, before he parts with the cargo, shall get a proper security from the receiver of the cargo, guaranteed, if necessary, by some responsible person, agreeing to pay the amount as soon as it can be adjusted. If the captain delivers it to the consignee without obtaining from him the amount of such contribution, he must then look to the shipper or owner of the goods for payment, and not to the consignee.

If the bill of lading is not produced, the captain may, after waiting a reasonable time, deliver the goods on the shore, or at a wharf, to some third person, to keep until the bill of lading is produced; and now, in discharging cargoes at ports in the United Kingdom, further powers have been given to the owners and captains of ships by the Merchant Shipping Act, 1862. Under that Act, if the owner of any goods imported from abroad does not enter the goods at the custom-house, or take delivery of them, the shipowner or captain may, at any time after the time named in the charter or bill of lading, for delivery of the goods (or if no time is named, then at any time after seventy-two hours, exclusive of Sundays and holidays, after the report of the ship at the custom-house),—

1. Enter the said goods at the custom-house.
2. Afterwards land them on the wharf or warehouse, named in the charter or bill of lading, if there is room there. If there is no particular wharf named, or if there is no room there, then he can land the goods at any wharf where such goods are usually landed.

DAMAGE TO THE CARGO.

As a general rule, the shipowner is bound to deliver the cargo in as good a condition as it was in when it was delivered to him, and it is the duty of the master to take all possible care of it. If he neglects to do so, the shipowner will be liable for all damage which is caused by the negligence or misconduct of himself, or his captain, or crew, even if the bill of lading says he is not to be liable for any damage. If the cargo has received damage *prima facie*, the shipowner is liable and it will rest with him to prove that the damage was not caused by the fault of himself, or the ship, or any of his crew; therefore if anything has occurred which may have damaged the cargo, the captain should be careful to have both the damage, and also the hatches, stowage, and dunnage, &c., properly surveyed by competent persons.

The shipowner is liable for damage caused by the unseaworthiness of the ship, or by overloading, or by bad stowage, or want of proper dunnage, or by rats (unless such damage is excepted in the charter and bill of lading), or by the ship not being properly pumped, or by not having the cargo ventilated (so far as it can be done).

The shipowner is not liable for damage if caused by the act of God (which includes lightning, tempests, &c.), the king's enemies, perils of the seas, accidental

fire, or any other damage which may occur, without any negligence on the part of himself or his servants, or from any fault in the ship or her equipments. The phrase "dangers and accidents of the seas" excepted by the charter and bill of lading has been held to mean those dangers naturally incident to navigation, and which cannot be avoided by human agency or care.

Formerly the merchant had no right to deduct from the freight any sum claimed by him for damage done to the cargo, or short delivery, unless the *amount due to him* for the short delivery or damage were agreed on by the shipowner or captain, and the consignee was bound to pay the freight in full, and afterwards make his claim for damage. Since the passing of the English Judicature Act, 1875, a deduction of this kind may be made, and if an action is commenced against the consignee for balance of freight, he can plead such damage by way of set-off or counter-claim.

A loss caused by an unavoidable collision is a loss by the perils of the sea, and therefore the shipowner is not liable to the merchant for any damage to the cargo occasioned thereby. An unavoidable accident has been defined to be an occurrence which could not have been prevented by that *ordinary* skill and diligence which is generally found in persons who properly discharge their duty. Extraordinary skill or diligence is not legally required.

If the shipowner or his servants have been guilty of any negligence, they cannot avoid liability for damage attributable to such negligence by showing that it would probably have occurred even if the greatest care had been used.

The shipowner, however, is only responsible for such acts of the master as are done within the scope of the

authority expressly or impliedly given to him, and he is not even liable for *all* acts done by the master within the scope of his general authority. Each case must depend upon its own particular circumstances. The shipowner is liable for errors of judgment, or for the negligence or unskilfulness on the part of the master while he is in the execution of his duty, but he is not liable for an illegal, or for a wilful or malicious act, done by the master or the crew beyond the scope of his or their duty.

By Sec. 503 of the Merchant Shipping Act, 1854, the owner of any seagoing ship is not liable for any damage that may happen without his actual fault or privity by reason of fire on board the ship, or the robbery, &c., of any gold, silver, watches, or jewels, unless the owner or shipper have at the time of shipment inserted in his bills of lading, or otherwise declared in writing, to the shipowner or master the true nature and value of such precious articles.

PORT DUES AND WEIGHING CHARGES.

Payments due to harbour authorities for weighing out a cargo are payable by the shipowner, if it be necessary to weigh the cargo *before* it leaves the ship; but if the cargo is to be weighed after it is landed, then the consignee is liable, and if the amount is paid in the first instance by the captain he can recover it back from the consignee.

PAYMENT OF THE FREIGHT.

No freight is due until the voyage is completed unless there is some stipulation in the charter for payment of the freight or a portion of it in advance.

If a part of the freight is paid in advance under an agreement to that effect in the charter, and the ship is lost, the money so advanced cannot be recovered back from the shipowner. But if it was advanced merely as a loan, and not as part of the freight, or if the amount is described in the charter not as freight, but merely as an advance of money to meet disbursements, or if the charter contains no agreement to advance it, or if the loss of the ship has been caused by the negligence of the captain, then the merchant can recover it back if the ship is lost.

If it is agreed by charter that if the master signs bills of lading for freight below the charter rate, he is to receive the difference in cash, or by bill, and he so signs bills of lading, but does not so obtain the difference, then the shipowner, if the ship be lost, can still recover such difference from the charterer.

If the charter says the amount is to be advanced "subject to insurance," it is then considered part of the freight, and cannot be recovered back.

If the charter stipulates that the freight, or a portion of it, is to be paid at the expiration of a certain time after the sailing of the ship, before the right delivery of the cargo, and if before that time arrives she be totally lost, still the shipowner can enforce payment of the freight as agreed when the stipulated time arrives.

THE PARTIES LIABLE TO PAY AND RECEIVE FREIGHT.

The charterer is always liable to pay the freight (unless there is some special agreement to the contrary in the charter party), and so also is a consignee, who receives the goods as owner of them, by indorsement of the bill of lading. Therefore, after the cargo is delivered, if the freight is not paid, the shipowner has the option of suing either the charterer or the consignee. If the master signs bills of lading expressing that the freight is to be paid by the consignee, that will not release the charterer from his liability.

In order to make the consignee liable, it is necessary that he should *receive* the goods as *owner* of them. If the consignee has no interest in the goods he does not, by accepting the goods as agent, make himself personally liable to pay the freight. If the consignee indorses over the bill of lading to another person, he does not continue liable to pay the freight, but the actual receiver is liable.

The parties entitled to receive the freight are the persons who are owners of the ship at the time when the freight becomes due by the completion of the voyage.

If the ship is sold during the voyage, the freight is payable to the person who is owner of the ship when the voyage is completed, and it is not divided between the late and the present owners.

A mortgagee of a ship is not entitled to receive the freight unless he has express authority to do so from the owner, or unless he is in possession of the ship when the freight becomes due. But when he takes possession he is entitled to take the whole freight; but he should be careful to keep an accurate account of all payments and

receipts, for he is liable to pay the mortgagor all moneys received beyond proper expenses and the interest on the loan, and also liable for all moneys which might have been made but for his neglect or default.

AMOUNT OF FREIGHT.

The amount of freight is *prima facie* to be calculated on the quantity of goods delivered, but if they have increased in bulk during the voyage (for instance, by heating, in the case of a cargo of grain), then the freight is to be calculated not on the quantity of goods which the ship puts out at the port of delivery, but upon that quantity only which has been put on board, carried through the whole voyage, and delivered at the end of it. If the quantity decreases, as is the case with molasses, &c., then the freight is payable only on the quantity delivered and not on the quantity shipped.

Even if the whole cargo is carried to its destination but it is impossible to deliver the whole of it in consequence of the commencement of hostilities or any other cause, still freight will only be payable on the quantity actually delivered.

If a lump sum has to be paid for the freight, and, in consequence of some accident, a part of the cargo only is delivered, a proportionate sum will be payable for the freight, on the amount of cargo delivered.

If the cargo is so much damaged that when it arrives at its destination it is not worth the freight, the merchant cannot avoid payment of the freight by abandoning the cargo to the shipowner; whatever may have been the cause of the damage.

If there is a deficiency in the weight of a cargo which is not naturally liable to decrease in weight, the onus lies on the shipowner of proving that the deficiency has

not been caused by the negligence of himself or his captain or crew.

“Right and true delivery,” means delivery of the right quantity, although the quality may be damaged.

If the freighter agrees to supply a full cargo and does not do so, he is bound to pay to the shipowner the sum which would be payable in respect of a full cargo, whether he actually loads a full cargo or not, and the amount is to be reckoned on the tonnage which the ship is actually able to carry, and not on the tonnage (if any) named in the charter party.

If the merchant puts a deck load on board when the charter provides for a freight of a lump sum, without saying anything about a deck load, extra freight will be payable for the deck load at a proportionate rate, the deck load not counting as cargo stowed in the usual loading places of the ships.

If the charter stipulates for payment of the freight in cash, the consignee has, in general, no right to claim any deduction for discount or interest in pursuance of any alleged “custom” of the port. Even if there is a custom of the kind alleged, it will not override the express terms of the charter, unless the shipowner knew, or might reasonably be supposed to know, of such custom before he entered into the charter.

If the charterer accepts the cargo at a port short of its destination, a proportionate part of the freight will be payable for the distance which it has been carried; such amount is not considered to become due under the charter, but the law implies that the merchant, by accepting the cargo, consents to pay a proportionate amount of freight.

The merchant is never liable to pay a higher amount of freight than is named in the charter, even if the captain,

in consequence of some accident, cannot carry the cargo to its destination, and tranships it at a higher freight.

SHIPOWNER'S LIEN ON THE CARGO.

The shipowner, or the captain on his behalf, has a right to retain possession of the cargo until the freight is paid, if the freight is payable on delivery of the cargo. If it is payable at some future day, then there is no lien, the shipowner must give up the cargo and wait for payment; but if the amount is to be paid by bills of exchange, then there is a lien on the cargo till the bills are given. If the person who is, under the charter, to sign the bills is known to be of no credit, still the cargo will have to be given up on receipt of the bills according to charter. If, however, a bill has already been given for the freight, and it has become due and dishonoured before the ship arrives at her destination, then the lien is revived and the cargo can be held till the bill is paid, unless the ownership of the cargo has been changed in the meantime by a transfer of the bill of lading.

There is no lien for dead freight, for it is only unliquidated damages by another name.

It is the duty of the merchant to ascertain for himself what amount of freight is due; and, if it is payable by bill, he should offer to accept a bill for that amount. If the captain or owner does not know the exact amount of freight, it is advisable for him to give an express written notice to the merchant offering to draw a bill on being informed what is the correct amount due.

If a good and approved bill has been agreed for, the merchant is bound to offer a bill to which no reasonable objection can be made, and which *ought* to be approved by the shipowner. If the shipowner negotiates the bill, he cannot afterwards make any objection to it.

If, by the terms of the charter, the ship is to be navigated by the charterer, and at his own expense, and the shipowner is thus to give up the entire possession of the ship to the charterer, he loses his lien on the cargo, for he can only retain a lien so long as he retains possession of or control over the goods, unless the parting with possession is compulsory. The shipowner will not be considered to have given up the possession of the ship unless the words of the charter expressly state that to be the intention, and the contract can only be carried out in that way. The courts are not inclined to put on charters a construction which will give the whole possession of the ship to the charterer.

Technically speaking, the freight is not due until the *whole* cargo is delivered; but if there is a partial delivery of cargo at one time and place, the shipowner may become entitled to freight on such portion. The law considers then that the shipowner has given up his lien on the goods delivered, because the merchant has undertaken to pay the freight thereon.

The master can detain any part of the cargo for the freight due upon all that is consigned to the same person.

If the cargo is damaged, or if there is a short delivery, still the captain can hold it till the *whole* freight due on the quantity delivered is paid, even if the damage has been caused by the negligence of the captain, and the amount of damage exceeds the amount of the freight; and no alleged custom to the contrary will make any difference in this. If any damage has been caused by the negligence of the master, the merchant will have a separate claim for that against the shipowner, but one amount cannot be set off against the other so as to override the lien except by consent of both parties.

If the amount of freight named in the bill of lading is different from that named in the charter party, the master can only claim from the consignee the amount named in the bill of lading, and he has only a lien on the cargo for that amount, and the balance must be claimed from the charterer. But if the cargo still continues the property of the charterer, or if the consignee, before receiving the bill of lading, had full notice of all the terms of the charter, then he is liable to pay the amount of freight named in the charter, and the shipowner will have a lien for the whole sum.

If the freight is for a lump sum, and cannot be divided, then the lien would be for the amount named in the bill of lading.

The shipowner also has a lien on the cargo for any general average contribution which may be due from it; but there is no lien for demurrage, port charges, wharfage, or dead freight, unless specially agreed for by the charter party and bill of lading.

When the owner of any goods imported in any ship from foreign parts into the United Kingdom fails to make entry thereof at the custom-house, or afterwards to take delivery with reasonable despatch at the time stipulated in the charter for delivery, or, if no time is named, within seventy-two hours (exclusive of Sunday or holiday) after the ship is reported at the custom-house, the shipowner or master may make entry of such goods, and land them at the wharf or warehouse named in the charter, or if none is named therein at some proper and usual wharf or warehouse. The shipowner should, when landing the goods, give written notice to the wharf or warehouse-owner that they are to remain subject to a lien for freight or other charges to the sum mentioned in such notice. (See form in Appendix.)

The wharf or warehouse-keeper is then bound to retain such goods until the amount is paid, or the matter otherwise satisfactorily settled.

The merchant can bail out the goods from the wharfinger, by depositing with him the amount claimed by the shipowner, and that sum will be paid over to the shipowner, unless within fifteen days the merchant gives notice to the wharfinger requiring him to retain it, and if that notice is given, then the wharfinger must immediately inform the shipowner, and unless the shipowner within thirty days from receiving such notice commences legal proceedings against the merchant to recover his claim, and give the wharfinger notice in writing of his having done so, the wharfinger must return the money to the merchant. Therefore, as soon as the shipowner receives a notice from the wharfinger that the owner of the goods has ordered him to hold the money, he should consult a solicitor without any delay, as prompt steps must be taken.

If the owner of the goods make no deposit, and the lien is not discharged, the warehouse-owner may, after ninety days, sell the goods by public auction, and apply the proceeds of sale to paying the expenses of sale, the warehouse-owner's charges for storing the goods, the amount claimed by the shipowner, and then the balance, if any, is to be handed to the owner of the goods.

The shipowner's lien on the cargo may be lost :—

1st. By his taking a bill of exchange or other security for the money due, payable at a future day.

2nd. By wilfully injuring the goods ; or

3rd. By asserting a right to retain the goods on some other ground than the lien.

A demand of more than is due is not a waiver of the lien, neither is the delivery of a portion of the goods.

A delivery of a portion is only an abandonment of the lien *pro tanto*, that is, so far as the portion of cargo delivered is concerned.

When goods are detained by the shipowner, subject to the claim of a lien which is disputed, the owner of the goods must either pay the amount claimed under protest in order to obtain possession of the goods, and then sue the person who claimed the lien, to recover the amount which he has thus wrongfully obtained; or he can make a formal tender of the amount he considers really and legally due, and, if that is refused, he can then sue the person detaining the goods to recover the goods, and also damages for their detention. If the amount in dispute is not large, it is the duty of the owner of the goods to pay under protest the sum claimed; if he does not do so, he cannot recover full damages for the delay in case the detention was illegal.

If the person in possession of goods states expressly that he will not accept the amount really due, then no tender is necessary, but an action can be commenced at once.

SPECIAL ACTS IN FORCE IN THE PORT OF LONDON.

As the powers given to shipowners and wharfingers by local Acts are not taken away by the Merchant Shipping Act of 1862, the provisions contained in the special Acts relating to the dock companies and to the "legal quays" and "sufferance wharfs" of the port of London* are still in force at those wharfs and docks, in

* The following is a list of the "legal quays" and wharfs named in the "Legal Quays Act," and to which these provisions are applicable:—Brewer's Quay, Chester's Quay, Galley Quay, Wool Quay, Custom House Quay, East India Wharf, Botolph Wharf, Hammond's Quay, Cox's Quay, and Fresh Wharf. The following are the

addition to the powers contained in the Merchant Shipping Act.

Under these special Acts, if the consignee of goods which have been imported neglects to make entry thereof at the Custom House for forty-eight hours from the day on which the ship has been reported at the Custom House (unless a longer time is allowed to him by his bill of lading or charter party for discharging the cargo), the master or owner of the ship may enter the cargo or any part of it in his own name, without any authority from the consignee, and land the goods, and, when so landed, they shall be considered to remain in the custody of the shipowner the same as if they had remained on board the ship, and they may be detained until the person applying for the delivery thereof pays the freight, wharfage, warehouse rent, and other charges payable thereon, and also delivers to the master or owner of the ship or his agent a duplicate of the bill of lading. Goods so warehoused are to be subject to all the same regulations as goods entered and warehoused under any of the Customs Acts. The shipowner is empowered, by giving a written notice at the office of the wharfinger, to require him to detain the goods until the whole freight, wharfage, rent, and other charges are paid, provided that the notice is given before the wharfinger has issued a warrant for the delivery of the goods or accepted an order from the

“sufferance wharfs” named in the Sufferance Wharf Act, and which are also subject to the same provisions as legal quays:—Fenning’s Wharf, Topping’s Wharf, Chamberlain’s Wharf, Cotton’s Wharf, the Dépôt Wharf, Hay’s Wharf, Beal’s Wharf, Carpenter Smith’s Wharf, Griffin’s Wharf, Gun and Shot Wharf, Simon’s Wharf, Pickle Herring Upper Wharf, Pickle Herring Lower Wharf, Mark Brown’s Wharf, Davis’s Wharf, Hartley’s Wharf, and Butter’s Wharf.

owner or consignee for the delivery of them. If the shipowner has given the wharfinger notice to stop the goods, the latter is bound to detain them until the owner or consignee has produced a withdrawal in writing of the order of stoppage, signed by the owner or master of the ship,* unless the owner or consignee of the goods deposits the money claimed for freight in the Bank of England (or some other bank, if the shipowner and consignee both agree to it) in the joint names of the consignee and the shipowner; but such deposit is not to prejudice the right of the owner to sue the party liable to pay the freight.

If the only question in dispute is the *amount* payable to the shipowner, the consignee is to declare in writing to the wharfinger the sum which he admits to be due, and the sum so admitted is to be paid to the shipowner, and then only the balance in dispute is to be deposited in the bank.

The wharfage, rent, and other charges payable to the wharfinger are to be paid within two months if the goods are of a perishable nature, or within twelve months if they are not of a perishable nature; or, if default is made in payment, the wharfinger may pay the duties payable on the goods, and sell them, after giving proper notices, as named in the Act.

Under the Acts relating to the London Docks, the St. Katherine's Dock, the Victoria Dock, and the Surrey Commercial Docks, those docks and the quays and premises belonging thereto are to be considered as "legal quays," and subject to all the regulations contained in the Legal Quays Act, and, in addition, they are authorised to issue to the owner of goods ware-

* The owner or master is bound to sign such order of withdrawal on the freight being paid or tendered to him.

housed on their premises a certificate or warrant for the delivery of such goods, but no such warrant is to be issued until all liens or claims to which the goods are liable are discharged. The warrants so given are transferable by endorsement, and no notice to detain goods is available at those docks unless it is given before the warrant is issued.

DEMURRAGE.

If a vessel is detained, either in loading or unloading, for a longer time than the number of days stated in the charter, the shipowner is entitled to demurrage. If no definite time is stipulated for loading, the charterer is bound to load the ship in a reasonable time after the ship is ready to receive cargo, and it is the duty of the charterer to have the cargo in readiness. A "reasonable time" means a reasonable time under ordinary circumstances, and if any *extraordinary* circumstance should delay the loading the delay will be at the charterer's expense. In deciding what is a reasonable time, the usage of the port (if any) is to be considered. Forty-nine tons per working day has been held to be a reasonable time for delivery of coals in the Thames.

If the charter says the ship is to be loaded in regular turn, the question of what is a regular turn, if it is disputed, is a matter to be settled by a jury. It has been held, that in computing the "regular turn," the names of the ships must be placed in the order of their being ready to load, and not in the order of their arrival in the port.

"Usual despatch" has been held to mean the usual despatch of persons who have a cargo in readiness for the purpose of loading, and if the merchant is prevented from obtaining the cargo by any cause, he must pay the shipowner demurrage for the delay. A person who charters a ship is supposed to be prepared with his cargo.

If the charter provides for a certain number of days on demurrage at so much per day, and the ship is detained longer than that time, then for all further days the shipowner is not restricted to the amount of demurrage named in the charter, but for the further days he can claim as "unliquidated damages" whatever amount of damage a jury may consider he has sustained by the delay. The amount of demurrage named in the charter will, however, be considered *prima facie* to be the amount due, unless the shipowner can prove that the sum named is inadequate. If the captain claims a larger amount than the sum named, notice to that effect should be at once given to the charterer.

Demurrage can only be claimed for detention at the port of loading, and at the port of discharge.

The lay days for loading commence to run as soon as the ship is ready to begin after her arrival at the place of loading, and according to the custom of loading such a cargo.

The lay days for discharging the cargo begin the day after the vessel is entered at the custom-house, and after her arrival at the usual place of discharge in the port of her destination, and not from the time of her arrival at the entrance of the port,* although a part of the cargo may, for the purposes of navigation, be taken out of her in the roads. But entry into the dock is sufficient without getting into a discharging berth. She must also be *ready* to discharge her cargo before the days begin to run. If, by the terms of the charter, the vessel has to discharge at some particular place in the port, the lay days do not commence till she has reached that place. If the vessel cannot reach the

* The limits of the port may be very extensive, for instance Gravesend is part of the port of London.

place of discharge till a spring-tide, the vessel will be bound to wait, without being entitled to demurrage. She must get to the place of discharge unless prevented by some *permanent* obstruction.

If the charter mentions "days" simply, without saying whether they are to be running days or working days, then running days are understood, and Sundays and holidays will be counted, unless there is some special custom of the port to reckon only working days. In London, by the custom of the port, "days" are understood to mean only working days, unless otherwise specified. After the ship is on demurrage all days (including Sundays and holidays) are counted, even if the charter specifies that the lay days are to be working days only, for that provision applies to the lay days only, and does not refer to the days when the ship is on demurrage. In calculating the number of days, any part of a day is reckoned the same as a whole day,

If, by reason of any accident, or other cause, not attributable to the merchant, it has become necessary for the shipowner to do repairs to the ship before she is fit to take in her cargo, the repairs must be completed before the time begins to run. But if it is the duty of the merchant, under the charter, to make alterations in the ship to enable her to receive the particular cargo, then he will be liable to pay demurrage for any delay on this account.

If, by the consent of all parties, it is agreed to send the ship to a new port of loading or discharge, the merchant will be entitled to the same number of days as he would have had at the port originally named.

The shipowner has no lien on the cargo for the demurrage, unless that is stipulated for in the charter and bill of lading. The captain has a right to settle a claim for

demurrage arising at a foreign port (and it will generally be found advisable for him to do so if he can obtain a favourable settlement): for it is considered by the law to be for the owner's benefit that the matter should be promptly settled abroad, instead of leaving it for dispute and litigation at home.

CASES IN WHICH THE SHIPOWNER IS ENTITLED TO
DEMURRAGE.

In the absence of any special agreement to the contrary the merchant is liable to pay demurrage if the delay arises from any cause which is not attributable to the shipowner or his agents. By law, the person who hires a vessel is considered to detain her, if, at the end of the stipulated time, he does not restore her to her owners; he is bound by the terms of his contract, and if he wishes to make any exception from the liability, it is his duty to provide for it specially in the contract, otherwise he will be liable for all delays whatever which are not attributable to the shipowner. The original charterer is liable to pay demurrage even though he has parted with the cargo and has nothing to do with the delay. It is sometimes provided by the charter party that the liability of the charterer shall cease on loading of the cargo being completed. But in the absence of any special agreement, or exceptions in the charter party, the merchant is liable to pay demurrage if he has agreed to load or discharge the ship in a certain specified number of lay days and he is prevented from doing so in consequence of:—

The crowded state of the docks.

Frost, or the state of the weather after the ship is ready, and until she is completely loaded.*

Strikes among workmen, or riots, which may prevent the merchant from obtaining the cargo.

Disputes with railway companies, along whose line the cargo is to be brought to the place of loading.

The non-arrival of the bill of lading.

The non-production of the landing papers.

The consignee being ignorant of the ship's arrival.

Quarantine regulations, which may delay the loading by prohibiting intercourse with the shore.

Custom-house regulations.

Illegal acts of custom-house officers.

Prohibition by a foreign government to export the stipulated cargo.

Impossibility of obtaining a cargo at the port.

Dispute improperly caused by the merchant, which delays the ship, such as preventing the captain from signing proper bills of lading, &c.

Alterations and repairs which have to be made to the ship by the *merchant* to enable him to load the cargo.

Refusal of the merchant to pay freight when bound to do so.

Having to discharge a portion of the cargo outside the port to lighten the ship, and enable her to enter the harbour, or reach her discharging berth.

If, however, the merchant has only agreed in the

* But the merchant is not liable for demurrage caused by ice, &c., after the vessel is loaded or discharged.

charter party to load or discharge the ship in regular turn, or in a reasonable time, then he is only bound to load or discharge her within such a time as would be considered reasonable under *ordinary* circumstances, and he will then not be liable for delay caused by custom-house regulations, or other unforeseen circumstances.

If no definite number of lay days are named in the charter for unloading the cargo, then there is an implied contract on the part of the consignee to discharge the ship in the usual and customary time for unloading such a cargo, and he is bound to unload with reasonable despatch.

The consignee of goods under bill of lading embodying the terms of the charter is liable for demurrage at the port of discharge, but not for delay at the port of loading unless it is so stipulated in the bill of lading.

It has been held that the clause in the charter party exonerating the charterer from liability after the loading of the cargo does not exonerate him from demurrage for detention at the port of loading.

CASES IN WHICH THE SHIPOWNER IS NOT ENTITLED TO DEMURRAGE.

It has been held that the merchant is not liable to pay demurrage if the delay is caused by—

The detention of the ship by a hostile force.

The hostile occupation of the intended port.

The wrongful interference of the shipowner, or any fault or negligence attributable to him.

Repairs which the *shipowner* is bound to make before the cargo is loaded.

The damaged condition of the ship, which may prevent her sailing.

Impossibility of the ship obtaining clearance, or accidents of any kind, or frost or bad weather after the loading of the cargo is completed.

Where the charterer undertook to load the ship before the first of September, but did not complete loading until the 28th of October, and just after sailing she met with an adverse wind, and had to put back, and was frozen up all the winter, it was decided that the ship-owner was only entitled to demurrage up to the 28th of October, the day when the ship was cleared out and ready to sail. The ship, however, might have returned home in ballast after the 1st of September, and then claimed dead freight.

If the charter exempts the merchant from liability for delay by ice, that will protect him, not only in respect of delays caused by ice in the port of shipment, but also by ice which may prevent the cargo from being brought to the port from the place whence it is usually obtained.

If neither party has contracted, either expressly or impliedly, that there shall be no delay, then the owner of the cargo is not liable for any delay caused by unforeseen circumstances over which neither party had any control.

Where a given number of days are allowed for loading or discharging there is an implied contract on the part of the charterer that from the time the ship arrives at the usual place for loading or discharging he will take the risk of any ordinary vicissitudes which may occur to prevent his releasing the ship at the expiration of the lay days.

DEMURRAGE WHILE REPAIRING DAMAGE.

In case damage is wrongfully done to a ship by collision or otherwise, the owner of the injured vessel is entitled to claim, in addition to the amount of damage done to her, compensation for the loss he has sustained by her non-employment during the repairs.

In the Court of Admiralty the amount allowed for sailing ships for damages during repairs is twopence per ton per day when the crew have been discharged; threepence per ton per day when part of the crew have been discharged, and the master and mate only remain; and fourpence per ton per day when whole crew is on board. For steam vessels the rate allowed is higher, being sixpence per ton on the gross tonnage, or ninepence per ton on the nett tonnage per day with the crew on board. These amounts, of course, vary with the special circumstances, but usually the amount awarded is within the above-mentioned limits.

PROTESTS.

WHEN from home the captain should note a protest if the ship has been wrecked, or if any damage occurs to the ship for which there will be a claim against the merchant or underwriters, or if the merchant refuses to load or unload the cargo, or if he does not load the right kind of cargo, or if he does not load a full cargo when bound to do so, or if he causes any detention in loading or unloading, or if he refuses to sign a charter party according to agreement, &c.

If there is not a notary at the port he should make the protest either before the British consul, if there is one, or some officer of the British Government, such as a magistrate, or collector of customs, and it is then advisable for the captain to keep a copy of the noting. If made before a magistrate, &c., he should sign the copy, showing that it is a true copy. If the protest is not made before a notary, the person before whom it is made should make a memorandum at the end, certifying that there is not any public notary at or near the place where the protest is made.

Neither a magistrate, nor a collector of customs, nor any one except a notary or a consul, is entitled to any fee for noting a protest.

To save expense, it is *generally* advisable merely to note the protest, and not to extend it, as it can be extended afterwards, and it is not necessary that the extended protest should be made before the same notary who noted the first protest. In extending the protest great care should be taken to have all the statements correct in every detail.

It is the duty of the master and crew to make a protest if required by the owners or consignees of the cargo; but the master cannot be compelled to do it at his own expense. The person requiring it should pay all the expenses.

If the noting of the protest has been delayed from any cause, it is better to add to the entry a short statement giving the reason for the delay.

If the master's services are required at the ship, he must not leave his duty to seek a notary—it is sufficient if the protest is noted within forty-eight hours from the time the captain is first able to leave the vessel.

The following fees are those usually payable to notaries for protests, &c.; but there is no fixed scale of charges, and each case must depend upon the amount of time and trouble involved.

	£	s.	d.
Noting each protest	0	2	6
If the protest is extended, then also, Fee on taking instructions for extended protest	0	6	8
Drawing, engrossing, and registering the protest for each "folio" (seventy-two words) exclusive of stamps	0	2	0
Stamp for each sheet	0	1	0
Fee for attending reading over the protest to the captain	0	3	4
Fee for administering each declaration	0	1	0
Fee for notarial seal	0	2	6

For Certified Copies of Protests.

Notarial copy of any document for each folio of seventy-two words	0	0	6
Notarial certificate that same is a true copy, with attestation and seal (exclusive of stamps and fees for attendances)	0	12	6

THE HOMEWARD CARGO.

IF the merchant who is to supply the homeward cargo has no interest in the outward cargo, the captain is bound to give notice to him or his agents that the ship is ready to receive her homeward cargo, and if this notice is not given, the charterer will not be liable to pay damages if no cargo is supplied to the ship.

If the merchant refuses to furnish a homeward cargo when that has been agreed for by the charter, or if he does not load the vessel within the stipulated time, the master can then either charter the vessel for another cargo, or if that cannot conveniently be done, he can sail home in ballast, and the shipowner will be entitled to recover from the charterer a sum equal to the full freight the ship would have earned if she had been loaded according to the charter. The captain, however, should not return in ballast if he can obtain another cargo; he is bound to do what is reasonable in endeavouring to earn a freight, to reduce the amount of the loss, and he should, therefore, as soon as the charterer has finally and definitely refused to supply a cargo, or as soon as the time he has agreed by the charter to wait for a cargo is expired, re-charter the vessel at the best homeward freight he can find, and then the deficiency of freight only, with the expenses of obtaining the new charter, will have to be paid by the original charterer.

To constitute a breach of the charter, the refusal must be clear and positive, and if, after the merchant does refuse, the captain declines to accept this refusal, or continues still to demand a supply of the cargo, then the

shipowner or captain cannot treat such refusal by the merchant as a breach of the charter, but the captain will be bound to carry out his portion of the charter, and wait till the whole of the lay days are expired before re-chartering or sailing home.

The captain is bound to wait the whole of the lay days before he is justified either in sailing home or re-chartering, unless the charterer or his agent specially requests him to re-charter, or states positively that no cargo will be furnished, and in either event it is advisable to note a protest before either re-chartering or taking in ballast.

If there is any fear of ice setting in, and the ship being frozen in port during the loading of the cargo, the merchant will not be liable to pay demurrage during the whole time the vessel is frozen up; his liability will cease as soon as he completes the loading of the ship. If the time during which the merchant should have loaded the ship is expired, he cannot require her to remain any longer, and the captain should, therefore, sail with such cargo as he has already got on board, rather than run the risk of being frozen up over the winter.

If the merchant cannot supply the cargo he has agreed to furnish, but offers to supply a different cargo, the captain should take such a cargo as the merchant can give (provided it is not dangerous or injurious to the ship), first noting a protest, and afterwards claim for any damage by reason of the breach of charter. If the shipper of the cargo is only the agent of the charterer, he has no authority to substitute a different port of loading, or a different voyage, instead of that named in the charter, and if he does so without authority his principal will not be bound by it. The captain should, therefore, be careful to see that the shipper of the cargo has got

such express authority before he alters the port of loading or changes the voyage.

If, when the ship arrives at her destination, the captain is unable either to deliver the cargo or to dispose of it by leaving it in safe custody, and he is forced to bring it back again, a return freight will be recoverable from the charterer.

SHIPBROKERS' COMMISSIONS.

A SHIPBROKER's right to his commission depends entirely on the usage of trade. The law assumes that the parties assent to pay the broker the usual commission unless a special agreement has been made respecting his remuneration. But as the usage is only admitted in evidence to show the supposed intention of the parties, evidence of former transactions between the same parties may be given for the purpose of explaining their intention in the matter in question.

To entitle the broker to commission, he must first be either actually or constructively employed; secondly, he must introduce the parties to each other; and, lastly, the business must have been completed in consequence of such introduction; and if these conditions are complied with, the parties cannot by any arrangement among themselves defeat his right to his commission.

First, he must be either actually or constructively employed. The principal cannot be liable unless there is either some express employment by him or recognition and adoption of the services of the broker. If the principal recognises and adopts the services of the broker, knowing that he is a broker, he is assumed also to agree to pay for the services, and he cannot afterwards repudiate his liability. Unless there is *some* agency established, there is no foundation for any contract between the parties. A jury must decide whether they are satisfied that, *with the assent of both parties* the plaintiff is the agent or middleman, by whose means the negotiation was commenced and made.

Secondly, he must introduce the parties to each other, either personally or by name, or bring them into communication with each other, with the object of effecting the business. A mere dry introduction is not enough; the particulars of the business must be named to the parties, and the negotiation of the business must be the direct result of the introduction. If the broker communicates to the merchant what the shipowner charges, and also communicates to the shipowner what the merchant will give, and he names the ship and the parties, so as to identify the transaction, and a charter party be ultimately effected for that voyage, the broker is entitled to commission; but if he does not mention the names, so as to identify the transaction, he does not get his commission, to the exclusion of another broker, who afterwards introduces the parties personally to each other.

The introduction he has made must be the foundation on which the business proceeds; therefore, as a general rule, the first broker who introduces the two principals to each other is entitled to the commission; but if, before the introduction by the broker, the ship has been pointed out to the merchant without that being the basis of any negotiations, that fact will not deprive a broker of his right to commission who afterwards brings the parties together for the purpose of effecting the business. Thus, in one case, a broker introduced a purchaser to the owner of a ship which was for sale; but before that time another person, who was not a broker, had pointed out the same vessel lying in the dock to the same purchaser, and stated that she was for sale, but he did not know who was the owner. The broker, who afterwards introduced the parties personally to each other, was held entitled to his commission.

After the broker has introduced the parties to each

other, they cannot evade payment of the commission, either by settling the terms or completing the business themselves, or by doing it through another broker. The question is whether the sale really proceeds in effect from the acts of the brokers, though they did not actually complete the contract. A dry introduction of one man to another would not be enough. But if the introduction is the foundation on which the negotiations proceed, and without which they would not have proceeded, then the parties cannot, by their agreement, deprive the broker of his just remuneration.

Thirdly, to entitle the broker to his commission it is necessary that the business should be completed; if it is not completed he has no right to charge anything for his trouble, even if the negotiation is broken off by the fault of the shipowner; and it was held in one case that, according to the usage of the City of London, if a charter is effected, but the bargain afterwards goes off, the broker has no claim either for commission or for payment of the expenses he has incurred, and the rule is the same even if the bargain goes off in consequence of the principal refusing to confirm his own terms.

He is entitled to his commission as soon as a valid agreement, whether for sale or charter of the ship, has been entered into, and the amount of the commission depends upon the custom, unless some special agreement has been made. If there is no uniform usage, he is entitled to a reasonable remuneration for his services, which in case of dispute may have to be settled by a jury.

It has been decided that a shipbroker's commission for effecting a charter is in all cases £5 per cent. on the amount of the freight, and is payable by the shipowner.

If the *amount* of the freight depends on a contingency, the broker cannot sue for his commission till that cou-

tingency is determined. So long, however, as the amount of the freight can be ascertained, he is entitled to his commission on that amount, although the ship may be lost and the freight never earned, or although no cargo may be supplied by the merchant. In one case, in which the freight had to be paid on the quantity of cargo delivered at the end of the voyage, and the ship was lost before the voyage was completed, the broker was held to be entitled to such a sum as the jury could estimate the amount at.

The mere fact that a broker has first introduced a customer does not give him a right to any commission on any *future* transaction which is not the direct result of further intervention on his part. But in a recent case, where a charter was renewed for a second voyage on the same terms between the same parties and for the same ship, it was held that the broker was entitled to a commission on that also.

The party to whom the commission is payable is the broker who actually procures the charter for the shipowner. But if the charter party says how or to whom the commission is to be paid, then, after signing the charter, the shipowner is bound by that.

If one broker introduces a customer to another broker, the introducing broker is entitled to receive from the other a share of the commission according to the universal practice among brokers; but the connection of the introducing broker with the business must not be too remote. Thus, in the case of *Gibson v. Crick*, the plaintiff, a broker, introduced the defendant, a shipowner, to Messrs. Spicer, who were also brokers, and they introduced him to a Captain Lay, and Captain Lay took him to Mr. De Mattos, who ultimately chartered the ship, and employed a broker named Bowan to complete it.

The Court decided that Gibson was not entitled to any commission, as there was no direct connection between him and the merchant, and because they were not the persons who negotiated the charter, but they only set in motion the news that a charter was wanted for the ship.

If several brokers are employed separately, the one who first introduces the parties to each other is entitled to the commission.

If, in consequence of the negligence of the broker (by neglecting to stamp the charter, for instance), the shipowner derives no benefit from his services, then the broker is not able to recover the commission, but, on the contrary, is liable to the shipowner in an action for damages sustained in consequence of his negligence.

MARINE INSURANCE.

A POLICY of marine insurance is a contract whereby one person in consideration of a premium undertakes to indemnify another from loss which may be caused by certain perils named in the policy. It is a contract in which, by the law of England, the strictest good faith is required, otherwise it will not be binding on the underwriter. The principles of marine insurance differ materially from those of fire insurance and life insurance, a marine insurance being strictly a contract of indemnity against loss, as will be seen hereafter.

INSURABLE INTERESTS.

Any person who has an *interest* in a ship, goods, freight, money, or profits, &c., may insure his interest, but no one can become entitled to any benefit under a policy unless he has some interest in the subject insured. He need not have a right to the whole, nor even to any definite part, but he must have some interest in it. The interest need not be existing at the time the policy is made, it is sufficient if there is an interest at the time of the loss, therefore freight which will hereafter arise from a voyage may be insured. The policy need not disclose the nature of the interest; thus, if a mortgagee insures he need not state in the policy that he is mortgagee.

If the ship is sold, the purchaser does not become entitled to any benefit of the policies then effected on her unless he has made an express agreement to that effect with the former owner.

A consignee who is owner of goods can lawfully

insure them ; but if he is only agent for another person, then he can only insure for the benefit of the real owner. The owner of goods can also insure the profit or commission which he expects to make upon the goods. The master may insure his wages, but the seamen cannot do so. Money advanced on bottomry can also be insured by the lender, to protect himself from the loss which he would sustain if the ship did not reach her destination.

A charterer who has advanced money to the ship-owner on account of freight, has an insurable interest in the amount he has advanced, but if the money is advanced, not as part of the *freight*, but only as a *loan* to meet disbursements, then the charterer has no insurable interest in it.

An underwriter who has insured any risk may re-insure the same risk, so as to indemnify himself against loss under the policy he has underwritten.

A contract of marine insurance is in the eye of the law strictly a contract of *indemnity*, to protect the insured against loss, and not to enable him to make a profit out of the insurance. An insurer, therefore, cannot insure goods in which he has no interest, neither can he insure any greater sum than the amount of his interest in the subject-matter insured ; but he may in the policy fix his own value on the interest, and that will be binding on both assured and underwriter provided that the interest has not been over-valued with any fraudulent intention. If any fraudulent over-valuation has been made, the policy is altogether void, and the assured cannot recover anything under it, not even the real amount of his interest.

Wager Policies :—A policy on a *British* ship or her cargo is void under the statute, 19 Geo. III., c. 37. if, on

the face of it, it professes to dispense with the necessity of any proof of the interest of the assured, either by the words "interest or no interest," or "without further proof of interest than the policy," or "without benefit of salvage to the insurer," or "policy to be deemed proof of interest," or any similar words with the same object. A mere valued policy, however, is not within the Act, and so long as the assured has *some bona-fide* interest, it is quite competent for him to fix his own value upon it in the policy.

Illegal Insurances :—Voyages which are prohibited by the law, and goods which are intended for some illegal trade (such as smuggling, &c.) cannot be insured. If a policy is void in consequence of its having been effected for an illegal voyage, the assured cannot recover back the premium, unless he can show that he was altogether ignorant of the illegal intention.

The subjects of a neutral state have a right to trade with a belligerent (subject, of course, to the risk of the goods being seized by the other belligerent), and an insurance of such goods is therefore valid, and the underwriter is liable if he was informed of the nature of the risk before the policy was effected.

A vessel attempting to run a blockade is liable to be confiscated if captured, but the voyage is not an illegal one, and an insurance can therefore be effected on it; but to make the underwriter liable he should be informed of the object of the voyage, as it is not an ordinary risk.

INSURANCE AGENTS.

Insurances effected with private underwriters are usually negotiated by brokers. An insurance broker who undertakes to effect an insurance is bound to

exercise proper skill and diligence, and he must insert all clauses usually inserted in policies for the voyage intended to be insured against. If he fail to do so he is liable to his employer for any loss which the latter may sustain in consequence of such neglect. The agent who effects an insurance is entitled to a commission of £5 per cent. on the premium, but under the Stamp Acts he is not entitled to charge any commission unless a properly stamped policy has been executed. Any insurance agent or other person who issues a document purporting to be a copy of a policy while there is not in existence a policy duly stamped, whereof such document is a copy, is liable to a penalty of £100.

The broker is liable to the underwriter for the amount of the premium, but in respect of losses under the policy, the underwriter is liable to account with the assured, and not with the broker. The shipowner, however, is liable to the broker, and not to the underwriter, for the amount of the premium of insurance, and after issuing a policy the underwriter must look to the broker for payment of the premium; he cannot claim it from the shipowner, as the receipt in the policy discharges him from liability.

The broker has a lien on the policy for the amount due to him for premiums, and he can therefore retain it until he is paid.

A part owner of a ship has no implied authority to effect an insurance as agent for his co-owners, and if he insures without authority he cannot charge the premiums against his co-owners, unless they have since adopted the insurance. A part owner who is ship's husband, however, usually receives authority to insure in the agreement by which he is appointed.

MISREPRESENTATIONS AND CONCEALMENT.

In effecting a contract of insurance the utmost good faith must be observed by both parties, and if the assured, before affecting the insurance, either wilfully or through ignorance misrepresents or conceals any facts which might have influenced the underwriter in accepting the risk or in fixing the amount of the premium, the policy will be void, even if the underwriter has not been in any way prejudiced by the concealment or misrepresentation. If, however, the assured merely states his *bonâ fide* belief that a certain fact is true without alleging it as a fact, that will not avoid the policy. The misrepresentation need not be in writing, a merely verbal misstatement is sufficient to avoid a policy. If the representation is inserted in the policy it then becomes a *warranty*, and must be literally and strictly complied with; if not inserted in the policy the assured is protected, provided that the representation is *substantially* true.

A "concealment," in order to vitiate a policy, must be the suppression of some *material* fact known to the assured, and which the underwriter has not the means of knowing. Any circumstance is considered material which would probably make the risk appear greater to the underwriter.

Good faith forbids either party, by concealing what he knows, to draw the other into a bargain from his ignorance of the facts. The facts lie most commonly in the knowledge of the assured only; the underwriter trusts to his representation, and relies upon the assured not keeping back any circumstance to mislead him, or which would influence him in estimating the risk. The

keeping back such circumstance is a fraud, and although the suppression may happen simply through a mistake, the policy is void because the risk is different from that which was understood and intended to be incurred by the underwriter.

The assured, however, is not bound to mention what the underwriter knows, or ought to know. For example, the contents of Lloyd's Lists are supposed to be known to the underwriters; but the assured must not make any misrepresentation to prevent the underwriter from looking at the List. Nor is it necessary for the assured to give information as to what lessens the risk, nor general topics of speculation, nor loose rumours, nor the difficulty of the voyage, &c., and he need not explain customs of trade, or other similar matters which are supposed to be common knowledge.

If it should turn out that in consequence of some misrepresentation, the ship has not been legally insured the underwriter is bound to return the premium unless the misrepresentation was fraudulent.

WARRANTIES.

A warranty in marine insurance is a condition or contingency on which the validity of the entire policy depends. Warranties are of two kinds—(1) *express*, and (2) *implied*.

Express Warranties :—An express warranty is a statement inserted in writing on the face of the policy, either in the body of the policy, or in the margin, or at the foot, or contained in an annexed paper which is particularly referred to in the body of the policy. Every express warranty must be strictly and literally complied with, otherwise the policy is invalid. It is perfectly

immaterial for what purpose a warranty is introduced, but when inserted the contract does not exist unless the warranty is strictly complied with.

The most usual express warranties which are inserted in policies are the following: That the ship will sail on, or before, a certain day, that the ship was safe on a certain day, that the ship (in time of war) is neutral property, &c., and no express form of words is necessary to constitute a warranty.

If a ship is warranted "to sail" before a certain day she must commence her voyage before that day. The warranty is not complied with by the vessel raising her anchor, getting under sail, and moving onwards, unless she has everything ready for the performance of the voyage, and nothing remains to be done afterwards. If, however, the ship, after setting sail with the final intention of proceeding on the voyage, is detained by stress of weather, or other unforeseen cause, or if she has for a similar cause to put back to her port, that is not a breach of the warranty, for the warranty was complied with on the ship first setting sail from the port.

Implied Warranties :—In a voyage policy the principal implied warranties are the following: That the ship is seaworthy; that the ship has proper documents; that the assured will use proper diligence to avoid the risks insured against; that the ship will not deviate on her voyage. An implied warranty, however, can always be varied by an express stipulation in the policy.

Seaworthiness :—In every insurance for a voyage there is an implied warranty that the ship is seaworthy at the commencement of the voyage; or if the ship is at sea when the policy is made, then there is an implied warranty that she was seaworthy at the commencement of

the risk. A ship is not considered seaworthy unless she is herself tight, sound, and strong; and she must also be properly equipped, provisioned, manned with a sufficient crew, and with a competent master; and she must have a pilot on board if necessary. If she is seaworthy at the commencement of the voyage, the owner has done all he contracted to do, and the underwriters will be liable for any loss caused by the perils insured against, although the ship may afterwards, during the voyage, become unseaworthy in consequence of the negligence of the master or crew. A ship may also become unseaworthy through overloading, or bad stowage of the cargo. Whenever it is usual to employ a pilot at the port from which the ship sails, and whenever it is compulsory to employ a pilot during the voyage, she is considered unseaworthy if there is not a pilot on board and in this case the underwriters will be absolved from liability, although the ship may have been perfectly seaworthy at the commencement of the voyage. In *time* policies, there is no *implied* warranty that the ship is seaworthy; but the assured must not send the ship to sea in an unseaworthy state, as he is understood to warrant that he will do all he can to guard against the risks insured against.

Deviation :—In a voyage policy the ship must not deviate from the usual and proper course of the voyage without a sufficiently justifying cause (either from necessity, or in pursuance of some well-established custom), or the underwriter will be discharged from liability in respect of any loss which may occur after the commencement of the deviation, for if the ship deviates, then the voyage which she makes is not the same voyage which the underwriter agrees to insure. It makes no difference whether the risk has been

increased by the deviation or not, so long as it has been varied; and if the ship, after deviating, returns again to her proper course, and then sustains an injury, still the underwriter remains discharged from his liability, even if the injury was in no degree attributable to the deviation. He remains liable, however, for all losses which occur up to the time the deviation begins.

A deviation is justifiable if it is necessary for the purpose of doing repairs during the voyage, or to obtain provisions, or if the ship is driven out of her course by stress of weather. It is very doubtful whether it is not an avoidance of a voyage policy for the ship assured to deviate even to assist another vessel in distress.

If, in a voyage policy, it is stated that the ship is to go to her ports of loading, or ports of discharge (if more than one), without mentioning the order in which she is to visit them, then she must visit them in their geographical order, taking the nearest first; but if the name of each of the ports is stated in the policy, then she is bound to visit them in the order in which they are named, unless there is some well-settled and general usage to justify the ship in visiting them in a different order; but the ship is not bound to visit *all* the ports named; she may omit some of them altogether.

If the port of destination is altered, that is not a deviation, but it is an entirely new voyage, and when the voyage is changed (unless it is changed from necessity), the liability of the underwriters on a voyage policy ceases altogether from the time when the abandonment of the voyage insured is first finally decided upon. Putting in at an intermediate port, however, is only a deviation.

The voyage must be commenced without any unreasonable delay; or it is considered to be a deviation, and

the underwriter will be discharged from his liability. A delay, however, which is necessary for the purposes of executing repairs, or for completing necessary arrangements for the voyage, or any reasonable delay which is usual in the trade, is justifiable, and will not discharge the underwriter.

THE POLICY.

Before executing a stamped policy, the underwriter usually at the time he accepts the risk, puts his initials to a minute, containing full particulars of the risk he agrees to accept. This slip (which is of course on unstamped paper) is not of itself legally binding on the parties; but if the underwriter has *received the premium*, he may be compelled by a court of equity to carry out his contract by executing a properly stamped policy.

The chief conditions on which the validity of a marine policy of insurance depends are as follows:—

- 1st. The voyage or risk insured must be described.
- 2nd. The names of the underwriters, and the sums insured, must be stated.
- 3rd. The policy must be properly stamped before it is signed, as it cannot be stamped afterwards.
- 4th. The assured must have an insurable interest in the property insured, and
- 5th. The name of the person assured, or his agent, must be inserted in the policy.

In construing the meaning of the policy, a greater weight is always given to the written part than to the printed part, as that is the language chosen by the parties themselves to express their intention. In other respects, policies are construed according to the same rules which are observed in the interpretation of other

mercantile instruments; thus recourse may be had to the usage of trade for the purpose of explaining the meaning. Technical words are to be taken in their technical sense; for instance, the expression "The Baltic," has been held to include the Gulf of Finland.

The form of marine policy now generally used is the same form which has been used for more than a century. Some of the chief practical matters connected with the subject will be found among the following notes appended to each of the clauses of a policy:—

I. NAME OF ASSURED OR HIS AGENT.

"In the Name of God, Amen.

"A. B., as well in his own Name, as for and in the Name and Names of all and every Person or Persons to whom the same doth, may, or shall, appertain, in part or in all, doth make assurance and cause him, and them, and every of them, to be insured, lost or not lost."

It is necessary that the name either of the person for whom the insurance is effected, or of the broker or other person who effects it, should be inserted (28 Geo. III., c. 56).^{*} The policy must not be issued in blank, or it

^{*} The words of the Act are, "the name or names, or the usual style and firm of dealing of one or more of the persons interested in such assurance, or * * * the name or names, or the usual style of dealing of the consignor or consignors, consignee or consignees, of the goods, merchandizes, effects, or property so to be insured; or the name or names, or the usual style and firm of dealing of the person or persons residing in Great Britain, who shall receive the order for, and effect such policy or policies of assurance; or of the person or persons who shall give the order or direction to the agent or agents immediately employed to negotiate or effect such policy," shall be inserted in the policy.

will be void. If the name of an agent is inserted, it is not necessary to state that he is only an agent.

Under the words which follow the name of the assured, any person who has a *bonâ-fide* interest in the ship, or goods insured, and for whose benefit the insurance was made, can claim the benefits of the policy, even if not named in it. On the other hand, no one can become entitled to any benefit under the policy unless he has *some* interest in the subject insured.

The words "*lost or not lost*," make the underwriter liable, even if the ship is already lost at the time the policy is made, but if the assured knew at the time of the making of the policy that the ship had already been lost, then he cannot take advantage of the words "*lost or not lost*." If these words are not inserted, the underwriter is not liable in case the ship happens to have been lost before the policy was made. The operation of the words "*lost or not lost*" is sometimes limited by warranting the ship to be well on a certain day. If this is done it is sufficient for her to be well on any part of the day named.

II. THE VOYAGE INSURED.

"*At and from*——" [here is to be inserted accurately the description of the voyage insured, if a *voyage* policy; or the limited time the policy is to last must be inserted if it is a *time* policy].

If the policy expresses the insurance to be "*at and from*," then the ship is insured during her stay at her port of sailing (provided that she does not remain there for an unreasonable length of time), but if it only says "*from*," then the insurance only begins at the time the voyage is commenced. If the ship is not at the port

named when the policy is effected, she must arrive there within a reasonable time in safety, otherwise the underwriter does not become liable under the policy.

If the insurance is for a voyage, and not for a period of time, the voyage must be accurately described in the policy, by stating the beginning and the end of it, otherwise the policy is void, under the statute 35 Geo. III., c. 36, s. 1. If insured for a *voyage*, the voyage which the ship makes must be the same voyage which is described in the policy, and she must not deviate from the usual course on such voyage.

In a time policy, the insurance is limited by the time named in the policy, without reference to where the ship may be, or whether the voyage is ended or not when the time expires. If insured while she is at sea, the insurance may commence from any past day, if the words "lost or not lost" are inserted in the policy, but the assured must not have had any intelligence of the ship having been lost, or the insurance would be invalid.

A time policy cannot be legally effected for a longer period than twelve calendar months.

If the proximate cause of the loss occurs during the continuance of the policy the underwriters are liable, although the amount of the damage may not be seen or ascertained till after the policy expires; for instance, if the ship receives damage, but is kept afloat till after the expiration of the policy.

If the voyage is illegal (for example, if it is made expressly for the purpose of smuggling, &c.), then it cannot legally be insured.

III. DESCRIPTION OF THE PROPERTY INSURED AND
DURATION OF THE RISK.

"Upon any Kind of Goods and Merchandizes, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture, of and in the good Ship or Vessel called The——, whereof is Master, under God for this present Voyage———or whosoever else shall go for Master in the said ship, or by whatsoever other Name or Names the said Ship, or the Master thereof, is or shall be named, or called:——Beginning the Adventure upon the said Goods and Merchandizes from the loading thereof aboard the said Ship——upon the said Ship, &c.——And so shall continue and endure during her abode there, upon the said Ship, &c., and further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandizes whatsoever, shall be arrived at——upon the said Ship, &c. Until she has moored at anchor twenty-four Hours in good safety, and upon the Goods and Merchandizes until the same be there discharged and safely landed."

The ordinary printed form of policy professes to insure the goods and merchandise on board, and also the body and tackle of the ship. If the policy is intended to be on the ship alone, or the freight alone, or cargo alone, &c., these words need not be altered in the body of the policy, but the real matter insured should be *written* in the blank left for that purpose in the policy, or in the margin of the policy, and then that is taken to be the description of the property insured; and the printed part, which is inconsistent with the written part, becomes of no effect.

The name of the ship should be inserted in the policy, but an error in the name will not vitiate the policy so

long as the identity of the ship can be proved, and the underwriter has not been prejudiced.

The name of the master also should be inserted, if it is known; but if it is erroneously stated or omitted altogether, that will not vitiate the insurance. The master can be changed without affecting the policy, so long as the insurer is not prejudiced by the appointment of a grossly or notoriously incompetent man.

If the insurance is on *freight* it must be described as such in the policy, and it cannot be included in an insurance upon *goods* without being specially named.

If the insurance is on *goods*, and the name of the ship is not known, the policy may state the goods to be on board "any ship or ships;" but, in that case, the assured must state the name of the ship to the underwriter as soon as he ascertains it.

In an insurance on goods, it is quite sufficient if they are described as "goods;" and it is not necessary to describe them further, but if any further description is given, the description must be accurate, or the underwriters will not be bound by the policy. At the end of the voyage the goods must be landed within a reasonable time; in case there is any undue delay in landing them the underwriter will be discharged from liability. The goods are insured until they reach the shore, and the underwriter is therefore liable if any loss occurs in the lighter, &c., between the ship and the shore.

A deck cargo should be described as such in the policy, otherwise it will not be insured unless it is shown that it is the universal custom in the trade in question to carry a deck cargo. An illegal deck load cannot be insured.

Under the above clause all the ship's stores, provisions, and outfit are included in an insurance on the ship.

The insurance continues until the ship has been moored for twenty-four hours in safety. This has been held to mean mooring in such a way that she may be able, if necessary, to discharge her cargo; therefore, if she has to go into quarantine, or if she has received such damage during the voyage that she can only be kept afloat with difficulty, and she afterwards founders, in neither of these cases can she be said to have been "moored in good safety."

IV. LIBERTY TO TOUCH AND STAY.

"And it shall be lawful for the said Ship, &c., in this voyage, to proceed and sail to, and touch and stay at any Port or Places whatsoever——without prejudice to this insurance."

If this clause is not inserted in the policy, the ship is not justified in touching at any port during the voyage; if she does so it is a deviation, and will vitiate the insurance, unless it is the universal custom in the trade for ships to call at that port. If, however, the policy states that the ship may call at one certain port, then she has not the right to call at any other port, even if it is customary to do so.

The blank space in the above clause is intended for the insertion of the particular places (if any) at which the ship is to have liberty to stay. If the ship has liberty to stay at a port she must not stay longer than is reasonably necessary, or it will be a "deviation."

V. VALUATION.

"The said Ship, &c., Goods and Merchandizes, &c., for so much as concerns the Assured, by Agreement between the Assured and Assurers, in this Policy, are and shall be valued at £——"

If it is intended that the policy shall be a "valued" one, the amount which the parties agree upon as the value of the property insured must be inserted here, and the amount so stated is conclusive between the underwriters and assured unless it is grossly excessive or the property is fraudulently over-valued.

If the amount at which the property is valued is not inserted, the policy is considered an "open" one, and then the amount of the interest of the assured must be proved in a case of a loss. If the policy is an open one, then, as the object of the insurance is to place the assured in the same position he was in at the commencement of the voyage (and not to place him in the same position he would have been in if the voyage terminated successfully), the value of the interest of the assured is reckoned at the sum the ship or goods were worth when the risk commenced, to which must be added the total cost of insurance (including the premium, commission, and cost of the policy), but without deducting anything for wear and tear, and (if the insurance is on goods) without adding anything for increased value of goods consequent on their carriage. The insurable value of freight in an open policy is the gross amount of the freight *plus* the cost of insurance, but without deducting anything for the cost of earning the freight. The insurable value of goods is their invoice price at the port of loading, *plus* the cost of shipping them, and insurance, &c.

The value stated in the policy is considered to mean the value of the interest which the *assured* has in the property; and not the total value of the property.

VI. THE PERILS INSURED AGAINST.

“Touching the Adventures and Perils which we the Assured are contented to bear and do take upon us in this Voyage, they are, of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mark and Countermark, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes, that have or shall come to the Hurt, Detriment, or Damage, of the said Goods, and Merchandizes, and Ship, &c., or any part thereof.”

The underwriters are only liable for losses caused by the perils named in the policy.

VII. SUING AND LABOURING CLAUSE.

“And in case of any Loss or Misfortune, it shall be lawful to the Assureds, their Factors, Servants and Assigns, to sue, labour, and travel, for, in, and about the Defence, Safeguard, and Recovery of the said Goods and Merchandizes, and Ship, &c., or any part thereof, without prejudice to this Insurance, to the charges whereof we the Assurers will contribute each one according to the Rate and Quantity of his Sum herein Assured.”

The assured is bound to save all he can for the benefit of all concerned, and under this clause the underwriters are bound to repay to the assured any expenses he may incur in endeavouring to save any part of the property. Even if the wreck is abandoned to the underwriters the shipowner can recover from them the amount he expends in endeavouring to save

the property, and although the ship may be abandoned, still the owner or captain is bound to save all he can.

VIII. AGREEMENT TO ASSURE, AND RECEIPT FOR PREMIUM.

"And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London: And so we the Assurers are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assureds, their Executors, Administrators, and Assigns, for the true performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance, by the Assured at and after the Rate of——."

"In witness whereof we the Assurers have subscribed our Names and Sums Assured in London."

The policy states that the premium is paid, and, therefore, after the underwriter has debited the broker with the premium, and handed over the policy, he cannot recover the amount from the assured.

THE MEMORANDUM.

"N.B.—Corn, Fish, Salt, Fruit, Flour, and Seed, are warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins, are warranted free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are warranted free of Average under Three Pounds per Cent. unless general or the Ship be stranded."

Under this clause the underwriter remains liable for all general average losses, and also for all losses in case

the ship is stranded, whether they amount to three (or five) per cent. or not, and whether the damage is caused by the stranding or not, providing the damage occurred after the stranding. To constitute a stranding, it is necessary, not only that the ship should strike the ground, but she must also become stationary there for some short time at least, actually resting on the bottom without being waterborne. If the striking is merely a "touch and go," or if she drives over rocks, thumping as she goes, that is not enough. In one case where the ship remained aground for only a minute and a half, it was held not to be a stranding. The stranding must be caused by some unexpected accident; a mere intentional stranding in a tidal harbour by the ebbing of the tide, in consequence of which the ship is strained, is not sufficient.

If during the same voyage there are two or more particular average losses, each of which is under three per cent., but which, added together, amount to more than three per cent., then the underwriter is liable.

Many questions have arisen on the construction of the words in this clause. It has been held that the word "*Corn*" includes malt, peas, and beans, but it does not include rice or spices; "*Fish*" includes both fresh and dried fish; "*Salt*" does not include saltpetre (as its meaning is to be taken in its ordinary commercial sense, and not in its chemical sense); "*Flour*" includes barley meal, but not sago (as sago is not a grain); "*Seed*" does not include spices, although they may be in the form of seeds; "*Sugar*" includes molasses and other saccharine productions whether manufactured from the sugar-cane or not; "*Hemp*" and "*Flax*" do not include jute; and "*Hides*" and "*Skins*" do not include furs.

IX. THE COLLISION CLAUSE.

The following running-down clause is frequently added to the policy:—

Collision Clause recommended by the Committee for managing the affairs of Lloyd's, after communication with the "Liverpool Underwriters' Association," and the "Salvage Association."

"And it is further agreed, that if the ship hereby insured shall come into collision with any other ship or vessel, and the insured shall in consequence thereof become liable to pay, and shall pay, to the persons interested in such other ship or vessel, or in the freight thereof, or in the goods or effects on board thereof, any sum or sums of money not exceeding the value of the ship hereby assured, calculated at the rate of eight pounds per ton on her registered tonnage, we will severally pay the assured such proportion of three-fourths of the sum so paid as our respective subscriptions hereto bear to the value of the ship hereby assured, calculated at the rate of eight pounds per ton, or if the value hereby declared amounts to a larger sum, then to such declared value, and in cases where the liability of the ship has been contested with our consent in writing, we will also pay a like proportion of three-fourth parts of the costs thereby incurred, or paid, provided also, that this clause shall in no case extend to any sum which the insured may become liable to pay, or shall pay, in respect of loss of life or personal injury to individuals for any cause whatsoever."

This clause protects the shipowner to the extent of *three-fourths* of his loss in case of damage to property. It does not protect him *at all* in case he has to pay damages for loss of life or personal injury (for which he is liable to the amount of £15 per ton on the tonnage of his ship), nor for damage to goods carried in his own ship. To obtain complete protection, the shipowner can, for a merely nominal payment, insure against this risk in a "running-down club," sometimes called a "protecting society."

WARRANTIES AND RULES OF MUTUAL INSURANCE
ASSOCIATIONS.

Mutual Insurance associations usually annex to their policies a copy of their rules. The provisions of these rules differ so materially in different associations that it is impossible to explain in detail the effect of each rule; it is sufficient to say that the rules when referred to in the policy are to be considered as warranties, and as such must be literally obeyed. Most of the rules contain a clause providing for a reference of all disputes to arbitration; this is binding on the member provided the rule states that the arbitration is to be a condition precedent to any action or suit being brought under the policy.

SIGNATURES OF UNDERWRITERS.

If the policy is underwritten by several individual and separate underwriters, then the names of all the underwriters, or the names of their firms, together with the sums insured, must be inserted at the end of the policy, but if it is an insurance by a company or association, it is sufficient if the total sum insured is named in the policy.

The date of signing is also usually added by each underwriter opposite to his name, as there is no date in any other part of the policy (except the date impressed on it by the Stamp Office).

The policy must be stamped before it is signed, otherwise it is void; it cannot be stamped afterwards.

As a general rule, the policy should not be altered after it is signed; but by the *express consent* of all the parties the words may be altered, so long as the subject-

matter of the insurance is not changed ; for if that were done a new stamp would be necessary. It has been held that a memorandum waiving a warranty, or correcting a mistake, does not make a new stamp necessary ; but in a case where the property insured was altered from "ship and outfit" to "ship and goods," and which was not done to correct a mistake, the policy was void for want of a new stamp.

STAMP DUTIES ON MARINE POLICIES.

Time Policies :—For every £100, or fractional part of £100, insured for any time not exceeding six months 3d.

Ditto, exceeding six months, and not exceeding twelve months 6d.

Voyage Policies :—For every £100, or part of £100, insured 3d.

If an insurance is made for a voyage, and for any period *longer* than twenty-four hours after the ship arrives at her destination, and has moored there in safety, the duty for both a time and a voyage policy is chargeable.

If separate interests are insured by one policy, the duty must be paid on each separate interest, instead of on the aggregate amount. Sea policies cannot be stamped after execution (except in the case of stamped policies of mutual assurances which may have *further duties added*, if not underwritten for more than the amount covered by the stamp already thereon). Any person effecting, negotiating, or underwriting an unstamped marine policy, or receiving a premium for the same, or issuing a copy of a policy where there is no stamped policy in existence, is liable to a penalty of £100.

TRANSFER OF POLICIES.

Under an Act passed in July, 1868, marine policies may be transferred, by an indorsement on the policy, in the following words, or by words to the same effect:—

“I, A. B., of——, do hereby assign unto C. D., &c., his executors, administrators, and assigns, the within policy of assurance on the ship, freight, and the goods therein carried [*or on ‘ship,’ or ‘freight,’ or ‘goods,’ as the case may be*]. In witness whereof I have hereto set my hand this——day of——18—.”

The assignee of the policy can sue the underwriters in his own name, but the underwriters may avail themselves of any defence which they would have had if the action had been brought by and in the name of the original holder of the policy.

LOSSES UNDER THE POLICY.

A loss to be recoverable by the assured under his policy must be proximately caused by some of the perils insured against by the policy, viz.: “Perils of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mark and countermark, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes.” If the loss is proximately caused by any of these perils, the underwriter is liable, although it may have been *remotely* caused by the negligence of the captain or crew.

The words "*perils of the sea*" include all sea damage caused by the violence of wind and waves, or by lightning, rocks, sand, &c., but they do not include ordinary wear and tear. Damage done to goods by the vapour or effluvium arising from other goods which have been damaged by sea water is covered by the policy, under the words "*perils of the sea*." In addition to their liability for damage done at sea, the underwriters of goods are liable for damage done to the goods by salt-water in the ship's hold during the loading of the ship in port.

The phrase "*perils of the sea*" also includes loss by foundering, or accidental stranding, capture by an enemy, and plunder by wreckers.

If slight damage occurs in fine weather that does not ordinarily give rise to a claim on the underwriter, but it is considered "*wear and tear*." The underwriter is not liable for a loss by a leak which is caused by worms, or which is the result of ordinary decay or wear, or straining, but he is liable if the leak is caused by the vessel being struck by a heavy sea, &c., as that is considered to be a peril of the sea.

Loss by "*fire*," whether the result of accident, or lightning, &c., is covered by the policy, unless it is caused by the bad quality of the goods insured.

Loss by "*pirates*" includes loss by mutiny.

Loss by "*thieves*" means robbery accompanied by violence, and does not include mere theft.

An "*arrest*" signifies the taking of a ship by a friendly government for state purposes (for instance, under an embargo) with the intention of returning her or paying her value.

The word "*people*" in this clause has been held to mean only the governing power of a country, and

nations in their collective capacity, and not a mere mob.

“*Barratry*” may be defined to be a damage to a vessel caused by any *wilful* breach of duty by the master or crew, whether induced by motives of advantage to themselves, malice to the owners, or disregard to those laws which the captain and crew are bound to obey, and which the owners relied on their observing. If the captain, through ignorance or mistake, does wrong, that is not barratry; to constitute barratry the wrong must be done intentionally, and with the knowledge that it is wrong, and it must also be without the consent of the shipowner. If the captain sinks or deserts the ship, or wilfully deviates from the direct course of the voyage, or commits any offence against the revenue laws, as by smuggling, &c., whereby the owner is injured, it is barratry, and the assured is entitled to recover from the underwriter any loss he may sustain thereby. A wilful breach of a blockade by the captain without the knowledge of the shipowner is barratry.

The words, *all other perils and misfortunes*, in a time policy have been held to cover a loss caused by the vessel being capsized in a graving dock by the violence of the wind and weather.

If a vessel is not heard of for a considerable time it is presumed that she has foundered, and the underwriter is liable to pay the loss.

Loss by *collision* is a loss by perils of the sea, and is therefore covered by the policy unless the loss was caused by the gross (but not wilful) negligence of the master or crew. The policy, however, does not cover any loss which the shipowner may sustain by having to pay damages to the owner or crew of another ship which has been run down by his vessel. If the usual

“collision clause” is attached to the policy that will protect the shipowner to the extent of *three-fourths* of the sum he may pay for damage to the other *ship and cargo*; but he will be left to bear the remaining one-fourth of damage to ship and cargo himself, together with the whole amount he may have to pay for any loss of life, or personal injuries, caused by the collision. As the shipowner is liable in case of loss of life or personal injuries to an amount equal to £15 per ton on the tonnage of his own ship, this liability is a very serious one, and as it is not covered by the policy, even if the “collision clause” is attached, he should protect himself by joining a mutual protecting association, by which means he can indemnify himself against this risk for a small annual premium.

If the ship be compelled to put into a port to repair damage which is not mere wear and tear, the expenses incurred there in making the ship fit to continue her voyage are recoverable against the underwriters. The underwriter, however, is only liable for such repairs as are absolutely necessary in consequence of the accident, and if, during the progress of the repairs old defects are discovered, these latter must be made good by the shipowner at his own cost.

The underwriter is also liable for all extraordinary expenses necessarily incurred in consequence of the perils named in the policy; for instance, he is liable for all general average contributions and salvage, &c.

Losses on Freight:—In freight policies, if the goods continue to exist in a fit state to be sent on, and the ship is able to continue her voyage, the underwriter is not liable for the loss of freight, even if the goods have been necessarily sold by the captain in consequence of the expense of sending them on; for a loss caused by

the act of the captain is not a loss by any of the perils insured against; but if the goods are so much *damaged* that it is not worth while to send them on, then the underwriter is liable. Whenever the earning of freight becomes impossible or hopeless, there is a total loss of freight within the meaning of the policy.

Losses under open policies:—If a *total* loss occurs under an open policy, the insured recovers the full amount insured, unless that sum exceeds the amount of interest he has in the property. If a *partial* loss occurs, then the percentage which the whole damage bears to the whole insurable value is ascertained, and the assured recovers that same percentage upon the sum insured by the policy; thus, if goods worth £1000 were insured for £800, and they sustain damage to the amount of £50 per cent. of their full value, the assured is entitled to payment of 50 per cent. on the £800, the sum insured on them.

Losses under valued policies:—In case of a *total* loss under a valued policy, the assured is entitled to the amount named in the policy, on showing that he had some interest in the property, without the necessity of proving the amount or value of the interest. In case of an *average* loss under a valued policy, the percentage which the damage bears to the actual value of the property must first be ascertained, and the assured will be entitled to recover that percentage upon the value declared by the policy.

TOTAL LOSS.

Total losses are of two kinds, *absolute* total losses and *constructive* total losses. An actual total loss occurs when the ship or goods insured is totally destroyed, or

no longer exists in its original denomination or form ; for instance, if a ship is wrecked so as to become a mere wreck or a collection of planks, and can no longer be called a ship, or if it is wholly out of the power of the assured to get the ship to her destination, or if the goods are so spoilt as to be practically useless and valueless, that is an actual total loss, and the assured is entitled to be paid the sum insured on the ship or goods, without giving any notice of abandonment.

A *constructive* total loss occurs when the property still exists in its original character and is capable of repair or salvage, but is so much damaged that it is not worth repairing or saving, or when the cost of the repairs or salvage would exceed the value of the property when repaired or saved. In order to entitle the assured to claim on his underwriter for a constructive total loss, he must, within a reasonable time after receiving the news of the loss, give a notice of unconditional abandonment of the property to the underwriter, so that the underwriter may, if he thinks fit, take the property himself. If he does so, he must pay the assured as for a total loss. If the underwriter does not accept the abandonment (as is usually the case), he is bound at once to inform the assured of his intention not to accept it, and then the assured is left to act on his own judgment. He must do the best he can for all concerned to lessen the loss, and anything which is done after the abandonment is considered to be done by the captain as agent for the underwriters, and for their benefit.

The difference between an actual total loss and a constructive total loss has been well explained as follows :—

“ The underwriter engages that the subject of insurance shall arrive in safety at its destined termination.

If, in the progress of the voyage, it becomes totally destroyed, or annihilated, or if it be placed, by reason of the perils against which he insures, in such a position that it is *wholly* out of the power of the insured, or of the underwriter, to procure its arrival, he is bound by the very letter of his contract to pay the sum insured. But there are intermediate cases ; there may be some peril which renders the ship unnavigable, without any hope of repair, or by which the goods are partly lost, or so damaged that they are not worth the expense of bringing them (or what remains of them) to their destination. In all these, or any similar cases, if a prudent man, not insured, would decline any further expense in prosecuting an adventure, the termination of which will probably never be successfully accomplished, a party insured may, for his own benefit, as well as that of the underwriter, treat the case as one of total loss, and demand the full sum insured. But if he elects to do this, as the thing insured, or a portion of it, still exists, and is vested in him, the very principle of indemnity requires that he should make a cession of all his right to the recovery of it, and that, too, within a reasonable time after he receives the intelligence of the accident, that the underwriter may be entitled to a share of the benefit of what may still be of any value, and that he may, if he pleases, take measures at his own cost for realising or increasing that value. In all these cases not only the thing insured, or part of it, is supposed to exist in specie, but there is a possibility, however remote, of its arriving at its port of destination, or at least of its value being in some way affected by the measures that may be adopted for the recovery or preservation of it. If the assured prefers to take the chance of any advantage that may result to him beyond

the value of the thing insured, he is at liberty to do so; but then he must also abide the risk of the arrival of the thing in such a state as to entitle him to no more than a partial loss. If, in the event, the loss should become absolute, the underwriter is not the less liable on his contract because the assured has used his own exertions to preserve the thing insured, or has postponed his claim till the event of a total loss has become certain, which was uncertain before."

If the owner wishes to claim for a constructive total loss he must give the notice of abandonment to the underwriters as soon as ever he has received certain intelligence of the casualty which renders it improbable that the ship will ultimately be recovered. If the information received by the owner is doubtful, he may wait a reasonable time before giving the notice, to enable him, if possible, to obtain more certain information.

If the notice of abandonment is not given within a proper time, the owner will be considered to have waived his right to abandon, and he cannot afterwards do it; in one case where the notice was given five days after the receipt of the news, it was held to be too late. When once given, it cannot be withdrawn without the underwriter's consent.

The assured has the right to abandon, and treat the loss as a constructive total loss—1st. If the ship cannot be repaired at any cost where she lies (either in consequence of the want of materials or the captain's inability to obtain money or credit to pay for the repairs at *any* rate of interest), and he is compelled to sell her as she lies, as the best and only thing that can be done. 2nd. If the ship is in such a state that a prudent owner, if on the spot and uninsured, would

rather sell her as she lies than attempt to extricate or repair her. In the latter case, a sale is only justifiable, either when there is no reasonable chance of ever extricating her at all, or when she could only be extricated or repaired so as to make her a seaworthy ship again at a cost (without deducting one-third new for old) which would exceed her fair marketable value after she is repaired. In either of these cases the loss amounts to a constructive total loss, which will entitle the assured to abandon and recover for a total loss (unless the policy only insures him against "actual total loss"). It is not absolutely necessary, however, that the master should sell the ship to enable the owner to claim for a constructive total loss. If the shipowner, on hearing of the disaster, abandons her to the underwriters, still it is the duty of the master to continue his exertions to save as much as possible, and do the best for all concerned, the same as if no abandonment is made. Anything which he does after the ship is abandoned to the underwriters is considered to be done as agent for them for their benefit.

In abandoning it is sufficient for the shipowner merely to give a written notice to the underwriters of his intention to abandon the ship to them.

The effect of the abandonment is to transfer all the interest of the assured in the ship and salvage to the underwriters from the time of the loss.

If the abandonment is accepted by the underwriters they become liable to pay all future outgoings, and are entitled to the salvage, and all the future earnings of the ship, and if the damage has been caused by a collision, for which another ship is to blame, the underwriters become entitled to receive the damages to be recovered from the other ship.

In writing home to his owners, after any accident, the captain should give full particulars of the damage done to ship and cargo, the exact position of the ship, and the chances of getting it repaired, so that they may be able to decide whether they will give notice of abandonment or not. The letters sent home by the captain will have to be produced to the underwriters, to inform them of the position of the ship, and to enable them to decide what course they should take, and they should therefore be written with care and accuracy.

An abandonment is absolutely necessary in all cases of *constructive* total loss, but if loss turns out to be an actual total loss, the claim of the assured is not prejudiced by his having previously unnecessarily given a notice of abandonment.

The assured may, under certain circumstances, become entitled to more than the total amount insured; for instance, if there is an average loss which is afterwards followed by a total loss, or a further sum may be payable to the assured under the clause which authorises him to labour for the defence and recovery of the property insured.

ADJUSTMENT OF LOSSES.

When the amount of a loss has been ascertained and admitted by the underwriter, a memorandum (called an adjustment) is usually indorsed on the policy, stating that the amount of the loss is at a certain rate per cent., and the underwriters append their names or initials, and by the ordinary custom the amount of the loss is usually paid about a month after the adjustment. The adjustment is an admission by the underwriter of his liability to pay the amount named, but it is not absolutely conclusive against him if he can clearly show

that he is not liable under the policy. In fact, even after *payment* of a loss, the underwriter can recover the money back, if he can show that after paying he has discovered some fraud, misrepresentation, or concealment by the assured of material facts.

GENERAL AVERAGE.

IN respect of certain losses which happen in time of danger to either the ship or cargo, for the joint benefit of both, the owner of the property so damaged is entitled to be reimbursed for a proportionate part of his loss by a "general average" contribution from the property to save which such loss was incurred.

A loss will not be the subject of a general average contribution unless it is either—

1st. Some *voluntary sacrifice* of part of the ship or cargo to prevent the whole from perishing; or,—

2nd. Some extraordinary *expense* incurred for the common benefit of both ship and cargo.

When the loss occurs, the amount of it is divided among all the property in the adventure which has been benefited by it.

The loss must not be from an ordinary peril of the sea; it must be a deliberate and voluntary sacrifice by the act of man in time of danger, done with the intention of benefiting the whole adventure by preventing a greater anticipated loss or damage: for instance, if goods are *thrown* overboard to lighten a vessel in a storm, it is a general average loss; but if they are only washed overboard by the sea, it is not. Deck loads, however, are only contributed for in general average when it is *usual* in the trade, and legal to carry deck loads. If masts and sails, or cables, are cut away and abandoned for the preservation of ship and cargo, that is a general average loss; but it is not so if they are merely destroyed by a gale, or by carrying too much

press of canvas, or if they are merely cut away because they cannot be saved. If the ship is voluntarily run ashore to avoid foundering, and she is afterwards got off again, and able to perform her voyage, the expense will be a general average loss; or if, in order to avoid impending danger, or to repair the damage done by a storm, the ship has to take refuge in a port to which she is not destined, that will give the ship a claim to a general average contribution for all the necessary expenses of bringing the ship into and clearing her from the port, including the cost of unloading and reloading the cargo, if necessary. But if she has to put in merely in consequence of contrary winds, &c., then the expense will not come into general average. A list of several losses, &c., which come under the denomination of general average, will be found at the end of this chapter.

If any salvage services have been rendered, the shipowner is entitled to be reimbursed the amount in general average, as it is incurred for the common safety of the whole adventure.

To constitute a general average loss, there must be:—

1st. A voluntary sacrifice made, or an expense of an extraordinary nature incurred.

2nd. It must be done with the object of preserving the remainder of the adventure. Therefore there cannot be a general average unless the *whole* adventure has been in peril.

3rd. It must be under the pressure of real danger, and as the sole means of escaping destruction.

4th. The loss must be judiciously incurred.

5th. It must be something quite beyond the ordinary duties or expenses of navigation (which would be mere wear and tear, and would fall on the shipowner solely).

6th. The sacrifice must accomplish the object contemplated, at least for some short time. If, notwithstanding the sacrifice, the ship perishes, then the loss is not a general average.

As a general rule general average only arises when something has been ultimately saved; but in cases where some extraordinary *expenses* have been incurred, and money has been spent in the endeavour to save the whole ship and cargo, then the person incurring these expenses is entitled to be repaid by a general average contribution, even if nothing whatever is ultimately saved.

If any loss occurs which will give rise to a general average claim, the particulars should be carefully entered in the log, showing that the sacrifice was necessary, and that it was for the benefit of both ship and cargo.

The average may be adjusted at the vessel's port of discharge abroad, and if it is correctly adjusted according to the foreign law (although different from the English law), and the amount is paid, that is a final settlement, and the merchant cannot recover from the shipowner any sum which would not have been allowed by the English law.

The captain has a lien on the cargo till all general average claims due from it are paid, and in many cases it is very desirable for him to avail himself of his lien. If he cannot get the average adjusted in time, an agreement to secure payment of it as soon as it can be adjusted should be obtained before the cargo is given up. (A form of agreement for this purpose will be found in the Appendix.)

If any loss or damage has occurred which may give rise to a general average contribution, the captain

should note a protest as soon as he arrives at a port where a notary can be found.

LIABILITY OF UNDERWRITERS.

If the person liable *to contribute* towards any general average loss is insured, then his underwriters are liable to pay to him a proportionate part of his loss, in such proportion as the total amount they have insured may bear to the total value of the things insured at the time of sailing. The general practice, however, is for the underwriters to pay the amount in the first instance *direct* to the person who is ultimately to receive it.

It has recently been decided that if property be sacrificed for the general benefit, it is the duty of the underwriters of *that* property to pay the amount of the loss, in the first instance, and then collect the contributions themselves from the persons liable to contribute to the average. The usual practice, however, is for the sufferer to collect the contributions, and then claim only the deficiency from his underwriters.

AMOUNT OF THE LOSS.

The value of the property lost is to be taken at its value at the port at which the average is adjusted. Thus, in the case of goods jettisoned, when the average is adjusted at the end of the voyage, they are to be valued at the price they would have sold for at the end of the voyage, less freight and all necessary expenses; but if the ship puts back to the port she sailed from, and the average is adjusted there, the value to be taken is the cost price, *plus* the amount expended in insuring

and putting them on board the ship; if adjusted at some intermediate port at which the ship may put in, the value is taken at the sum the goods would have sold for at that port, but the value of the whole of the goods (both those which had been sacrificed and those which had been saved) must be made on the *same* basis, and with reference to the same time, otherwise inequalities will occur.

All *consequential* damage caused by the making of the sacrifice is to be contributed for; thus, damage done to a ship or cargo on making a jettison, must be contributed for in addition to the goods jettisoned, and the shipowner is entitled to contribution for the full freight which he has lost by the jettison, and the owner of the goods receives the value of the goods.

Damage done to the ship is subject to a deduction of one-third, new for old, but from chain cables a deduction of only one-sixth is made, and anchors and ships' provisions are allowed in full. If, however, the ship is on her *first* voyage, then all repairs to the ship, &c., are also allowed in full. *Temporary* repairs also, which may be necessary to enable the ship to proceed on her voyage, are always allowed in full, as they do not ameliorate the ship.

WHAT PROPERTY CONTRIBUTES.

Both the property which is saved from the risk of loss and arrives safely at its destination, and also the property itself which has been lost, contribute equally in the general average, otherwise the owner of the goods sacrificed would be in a better position than the owner of the goods saved.

Passengers cannot be called upon to contribute in respect of their personal safety. Passengers' luggage also is not liable to contribute, as it is not on board for the purpose of traffic, but if it is sacrificed for the general benefit, it must be contributed for.

VALUATION OF PROPERTY TO CONTRIBUTE.

When the contribution is to be made in consequence of voluntary sacrifices, the property saved contributes according to its value in the condition in which it is when it arrives at its destination; but in case of extraordinary expenditure the value to be taken is the value at the time the expenditure was made, because in that case the person incurring the outlay is entitled to be repaid at once, whether the property is ultimately saved or not.

In making the calculation, the real values are to be taken, and not the values stated in the policies of insurance.

The *ship* is to be valued according to the condition she is in when she arrives at her destination. The value is arrived at by taking the original value of the ship when she sailed, and deducting from that the cost of provisions, &c., wear and tear, and any partial losses occurring before the general average loss.

The *freight* is to be valued on similar principles at the amount actually received, less the cost of earning it. If the voyage is abandoned altogether, from *absolute necessity*, then, as the freight is lost, it does not contribute at all, but if the shipowner, as a matter of *choice*, and not of necessity, abandons the voyage, then the freight contributes.

If the ship is chartered out and home, and she has a

general average on her *outward* voyage, then both outward and homeward freight must contribute; but if the accident occurs on her homeward voyage, then only the homeward freight contributes.

If the adjustment is made at the port of sailing, the estimated freight is taken less the estimated cost of earning it; *i.e.*, wages, &c. (but not victualling, as that is supposed to be included in the value of the ship).

If goods are trans-shipped, the value of freight to contribute is the nett amount of freight which has been saved, *viz.*, the old freight, minus the new freight.

The *cargo* is valued on a similar principle, at the sum it is worth on its arrival at its destination, less all necessary expenses for freight, &c. In case of jettison of a part of the cargo, the value of the goods jettisoned is added to the value of the goods which arrive at the end of the voyage. But if the ship has to put back to her port of loading, and the average is to be adjusted there, then the value is taken at the cost price of the goods, and the cost of putting them on board.

EXAMPLE.

The following example of the adjustment of a general average loss is taken from "Abbot on Shipping." For the sake of an illustration, it is supposed that it became necessary in the *Downs* to cut the cable of a ship; that she afterwards struck upon the *Goodwin*, which compelled the master to cut away his mast, and cast overboard part of his cargo, in which operation another part was injured; and that the ship, after being cleared from the sands, was forced to take refuge in a neighbouring harbour, to avoid the further effects of the storm.

<i>Amount of Losses.</i>		<i>Value of Articles to Contribute.</i>	
Goods of A. cast overboard	£500	Goods of A. cast overboard	£500
Damage of the goods of B. by the jettison	200	Sound value of the goods of B., deducting freight and charges	1000
Freight of the goods of A. cast overboard	100	Goods of C.	500
Price of a new cable, anchor, and mast, 300 } Deduct one-third new } for old 100 }	200	" D.	2000
Expense of bringing the ship off the sands	50	" E.	5000
Pilotage and port duties going into the harbour and out, and commis- sion to the agent who made the disbursements	100	Value of the ship	2000
Expenses there	25	Clear freight, deducting wages, victuals, &c.	800
Adjusting this average	4		
Postage	1		
Total of losses	£1180	Total contributory val.,	£11800

Then as £11800 : £1180 : £100 : £10 :

That is, each person will lose 10 per cent. upon the value of his interest in the cargo, ship, or freight.

Therefore A. loses	£50	being 10 per cent. on	£500
B.	100	" " "	1000
C.	50	" " "	500
D.	200	" " "	2000
E.	500	" " "	5000
The Owners lose	280	" " "	2800

Total £1180, the exact amount of the losses.

Upon this calculation, the owners are to lose £280; but they are to receive from the contribution £380 to make good their disbursements, and £100 more for the

freight of the goods thrown overboard, or £480 minus £280.

They therefore are actually to receive	£200
A. is to contribute £50, but has lost £500 ; therefore A. is to receive.	450
B. is to contribute £100, but has lost £200 ; therefore B. is to receive.	100

Total to be actually received £750

On the other hand, C., D., and E. have lost nothing, And are to pay as before, viz.,	{ C. £ 50 D. 200 E. 500
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Total to be actually paid £750

which is exactly equal to the total to be actually received, and must be paid by and to each person in rateable proportion, to be ascertained by another calculation, with which it is unnecessary to trouble the reader.

LIST OF LOSSES OF FREQUENT OCCURRENCE WHICH ARE CONTRIBUTED FOR.

The following is a list of some losses and expenses of frequent occurrence which are contributed for in general average :—

I. *Cargo thrown overboard (commonly called jettison).*

Goods voluntarily thrown overboard to save ship, freight, and cargo (the heaviest goods should be chosen if possible).

Freight of the goods thrown overboard is to be made good to the shipowner.

Damage done to ship or cargo in throwing the goods overboard (for example injury to goods removed to get

at the cargo, or by cutting away the ship's sides, &c., if necessary).

Expenses of recovering any goods thrown overboard.

Cargo lost from boats into which it had been put to save the ship from foundering (boats also if lost are in this case contributed for).

II. *Cutting away ships' masts, yards, spars, gear, &c.*

Damage done by necessarily and voluntarily cutting away masts, rigging, sails, &c., to relieve the ship in a storm or if she is thrown on her beam ends, &c.

Damage done to ship's deck or bulwarks by the falling of masts, which have been cut away to preserve ship and cargo. (But damage done by the masts *after* they have fallen into the water is not contributed for.)

Damage done to a *ship* by scuttling her, or by cutting parts of her away to extinguish a fire.

Anchors and cables slipped or lost to avoid collision and expenses of recovering them [but if the ship voluntarily goes into an *improper* anchorage, and has in consequence to slip her anchor, then it is *not* contributed for].

Anchors and cables lost in endeavouring to prevent the ship from driving on shore.

Expenses of carriage and shipping, &c., of *new* anchors and cables when the old ones are lost from *any* cause, and also the expense of carriage, salvage, and shipping the old anchors and cables if recovered after being lost from any cause.

III. *Ships' stores, &c., used for Extraordinary Purposes.*

All damage done to ships' ropes, spars, sails, boats, &c., by their being used for some *extraordinary* purpose

different from their ordinary use, for the benefit of the ship and cargo.

Ships' stores or materials taken from sea stock, and used in repairing the ship when in distress; for example, spars used for erecting jury-masts, or timber cut up to construct a rudder, or cables cut for any extraordinary purpose unconnected with the anchor, are contributed for in general average.

Damage done to boats when not used for ordinary purposes—for example, damage sustained while carrying out anchors, &c., or in heaving a ship off when stranded, or in taking cargo to the shore to lighten the ship and save her from foundering.

Damage done to sails when hoisted to get a stranded ship off the ground, or when the sails are used to stop a leak.

IV. Assistance and Salvage, and expenses while stranded.

Expense of obtaining assistance out from the shore.

Salvage and money paid for assistance when the ship is in distress.

Expenses incurred in getting the ship off the ground when stranded.

Expense of watching the ship when stranded.

Fees paid brokers and Lloyd's agents when ship is ashore.

Expense of raising the ship (if she is submerged) in order to get out the cargo.

Expense of discharging the cargo.

V. Expenses in port of distress while ship is under average.

Expenses incurred by the ship having to put into a port in consequence of some *accident* not attributable to the defects of the ship.

When a ship puts into a port under average, the following expenses are contributed for :—

Towage or expenses of obtaining assistance if necessary.

Expense of assistance for pumping the ship.

Pilotage inwards.

Harbour dues.

Expense of removing the ship to place of discharge.

Hire of tackle and labour in mooring the ship.

Custom-house charges.

Cost of a general survey before discharging cargo.

Cost of keeping the ship free from water while in port.

Cost of telegrams.

Hire of labourers and of tackle, bags, &c., and lighters for discharging the cargo, if necessary, to repair the ship, with cart hire from the shore to the warehouse, and hire of labourers in warehousing.*

Refuge dues.

Fees to receiver of Admiralty droits.

Cost of preparing bottomry bond, and premium on the loan.

Fees paid to notary for protest.

Commission and agency to broker in making the disbursements.

Repairs, if they are necessary to remedy some voluntary sacrifice *which is a general average loss*,

* But if the cargo is unloaded merely for the sake of preserving the cargo itself when the ship could be repaired without unloading, then the cost of unloading, &c., falls on the cargo.

and which repairs are absolutely necessary to make the ship seaworthy.*

And all other expenses inseparably connected with the putting into and sailing from the port.

VI. *Cost of raising money to pay for repairs or expenses.*

Cost of preparing bottomry bond, and premium on the loan.

Loss caused by the sale of any part of the cargo when necessary for the purpose of raising money.

VII. *The cost of adjusting the average.*

This is always allowed for.

* If the damage to be repaired is itself a general average loss, then Lord Tenderden, and also Mr. Arnold, consider that the wages of the crew while the ship is in port under average should be contributed for in general average; but the practice of average adjusters is not to allow the wages.

PARTICULAR AVERAGE.

"PARTICULAR average" is not a very accurate expression. What is called a *particular average* loss is, in fact, no average at all, but merely a particular loss to be borne by one particular interest; the expression is, however, universally adopted in referring to ordinary partial losses, accidentally caused by the perils insured against, either to the ship alone, or the cargo alone, or to the freight alone. Some extraordinary expenses (beyond mere wear and tear) not incurred for the joint benefit of ship, freight, and cargo, also come within the description of particular average.

As it is not a loss or expense incurred for the *general* benefit, it is to be borne solely by the property on which it happens to fall; but the sufferer, if insured, is entitled to have his loss made good by his own underwriters, if the loss comes within the terms of his policy.

PARTICULAR AVERAGE ON SHIP.

All partial damage to the ship, caused by the direct and violent action of the perils insured against, are particular average on the *ship*, and as such are chargeable against the underwriters, if the ship is insured. If the ship at the commencement of the voyage was seaworthy, and had a competent captain and a sufficient crew, then the underwriters are liable to make good any loss, of which the *immediate* cause was one of the perils insured against, even if the negligence of the captain or crew of the ship was the original or remote cause of the loss.

The following losses and expenses are recoverable as particular average on ship :—

Damage done by the accidental striking or stranding of the ship on a rock, shore, or wreck, or other solid body.

Damage arising from a leak, caused by the ship having struck the ground, or by being struck by a sea (but if the leak is caused by the ordinary straining of the ship, then it is only wear and tear).

Masts, spars, cables, anchors, &c., carried away or lost by a storm, or by the wind, or in a heavy, cross-rolling sea, or by other perils insured against (but the cost of *shipping* fresh anchors is general average, as before stated). If spars and rigging are damaged or broken by a storm, and are afterwards cut away and cast overboard because they encumber the deck, or because they cannot be saved, that is a particular average loss against the ship; but if spars or rigging are broken by the wind, and it becomes necessary to cut them away in order to *save the ship*, then the value of them, in the state they were in after the accident is to be contributed for in general average; and the residue is particular average.

Loss of sails, or damage done to them by a sudden squall, which does not allow time for them to be furled.

Sails burst by heavy seas.

Damage done by collision.

Loss of stores which are always carried on deck (such as water casks, &c.).

Boats washed overboard, if they were properly fastened and not carried on the stern davits.

Expense of necessary repairs to the ship at a port of distress.

Damage done to the ship, or to her masts, sails, &c.,

by standing out to sea in stormy weather to avoid being driven ashore.

Damage done to the ship while defending herself against an enemy.

In allowing for repairs a deduction of one-third new for old is made. The one-third deduction is made from the cost of the labour as well as from the cost of the materials.

The following are exceptions to this rule:—

 Anchors are always allowed in full, as they are considered not to deteriorate by use.

 Only one-sixth is deducted off chain cables.

 Copper sheathing is allowed for according to the time it has been on the ship: weight for weight is generally allowed. If any copper is taken off the vessel when abroad, the master should be very careful to have the weight certified by the proper person, and, if possible, he should get the certificate attested by the consul or a notary.

 If the ship is on her first voyage, then all repairs, &c., are allowed in full.

LOSSES WHICH ARE *not* PARTICULAR AVERAGE ON SHIP.

The following losses and expenses are not particular average, but they fall on the shipowner solely, and are not recoverable by him from his underwriters:—

 Ship's stores which were not kept in proper and secure places, and which have been thrown overboard or lost.

 Boats lost when hanging to the stern davits.

 Goods thrown overboard in consequence of the ship having been overladen.

 Expenses of putting into port in consequence of contrary winds, or to obtain provisions.

 Delay caused by Quarantine.

Loss by theft.

Wages and provisions of the crew while the ship is under average. (But if assistance is obtained from labourers or salvors, &c., then any amount properly paid to them is general average. It may, therefore, be advisable for the captain, in *some* cases, to pay off his crew, and obtain other assistance.) Wages, however, are allowed under the policies and rules of some mutual insurance clubs.

Wear and tear, and natural decay of the ship, such as :

Damage to cables by chafing against rocks.

Planks started without any violent cause.

Straining of the ship.

Damage to masts, yards, or sails, by carrying too much canvas.

Damage done by rats and worms.

Damage caused by bad stowage.

Damage to goods, in shipping or unshipping, caused by the neglect of the master or crew, or defects of the tackle.

Damage caused by the ship springing a leak in consequence of ordinary straining or her own inherent defects (but if the leak is caused by the striking of a heavy sea, or by stranding, it is a particular average).

PARTICULAR AVERAGE ON FREIGHT.

The following losses and expenses are particular average on *freight* :—

Removing the ship to the place of reloading when she is under average.

Cost of measuring or weighing the cargo on re-loading.

Cart hire from the warehouse to the lighters.

Hire of lighters from the shore to the ship.

Hire of labourers, &c., in re-shipping the cargo.

Use of bags, &c., in re-shipping.

Hire of stevedores, and all cost of stowing.*

Hire of assistance in leaving the port.

Pilotage and towage outwards.

PARTICULAR AVERAGE ON CARGO.

The following expenses, &c., are special charges against the cargo, and if paid by the shipowner he is entitled to be repaid in full by the owner of the cargo, who, if insured, recovers them from his own underwriters:—

Survey of *cargo* while ship is under average.

Cost of unloading the cargo when it is unloaded merely to preserve the cargo itself, and not simply to allow the ship to be repaired.

Warehouse rent of cargo landed while the ship is under average, and premium of insurance against fire while it is out of the ship.

Cart hire to a kiln to have the cargo dried if necessary, when the ship is under average.

Cost of drying the cargo if necessary.

Cart hire from the kiln to the warehouse.

Hire of labourers to keep in order, or repack, the cargo.

* If the ship has had to put into port to unload her cargo, *solely* in consequence of some defect in the cargo itself, for instance, by the heating of a cargo of grain, then all expenses connected with the re-shipping of the cargo, &c., are chargeable against the cargo.

Cost of repairing old packing cases or bags, and of obtaining new ones if required.

Damage done in shipping or landing the cargo, unless the damage is attributable to the negligence of the captain or crew, or the insufficiency of the ship's tackle.

All partial damage to the goods at sea, and which is caused by the perils insured against, is chargeable against the cargo and the underwriters of the cargo—for example, if damage is done by fire, or by the ship springing a leak during a storm.

Expenses connected with the sale of goods damaged by the sea, when they are necessarily sold to prevent further deterioration.

PAPERS TO BE SENT TO THE AVERAGE ADJUSTER.

Whenever a general average loss, or a particular average loss occurs, the captain should be careful to obtain the following documents, to enable his owners to get the average adjusted :—

- 1st. The survey of the ship and cargo, which is the most important document, and should be carefully prepared.
- 2nd. The extended protest, which should be particularly and carefully drawn.
- 3rd. All vouchers for payments made while under average, and if possible they should be certified by the consul or a notary, or some other public officer.
- 4th. Certificate of seaworthiness of the ship after the cargo is re-shipped.

In addition to the before-named documents, the

following papers (or such of them as may be necessary), should be supplied by the *shipowner* :—

Freight account, deducting wages and port charges.

Valuation of the ship in its damaged state

Valuation of cargo in its damaged state.

Original policies of insurance of ship and freight (if insured).

INQUIRIES INTO SHIPPING CASUALTIES.

THE numerous investigations ordered by the Board of Trade into casualties to the merchant shipping of the United Kingdom (all now included under the comprehensive title of "shipping casualties") have become so important to shipowners and officers as to demand a special chapter for their consideration in a work which claims to be a Manual of Shipping Law.

In dealing with this subject the questions naturally arise:—How are these courts of inquiry constituted, and when are they held? What have they the power to do? and what is the mode of procedure? To answer these questions as concisely as is compatible with clearness, and to make some general remarks on the subject, is the object of this chapter.

CONSTITUTION OF THE COURT.

By the Merchant Shipping Act, 1854, part 8, power is given to inspecting officers of coastguard, principal officers of customs, and others, to make a preliminary inquiry where (on or near the coasts of the United Kingdom) any ship has been lost, abandoned, or materially damaged, or any ship has caused loss or material damage to any other ship, or loss of life has ensued in consequence of any casualty happening to or on board any ship, and also where (elsewhere than on or near the coasts of the United Kingdom), any such loss, abandonment, damage, or casualty has happened, and competent witnesses thereof arrive or are found in

the United Kingdom.* To the person holding such preliminary inquiry is given power to inspect any ship or premises, summon and examine witnesses, enforce production of books and documents, and to administer oaths to and require and take declarations of witnesses.†

If it appear to the person making the preliminary inquiry that the case is of sufficient importance to demand a formal investigation, or if the Board of Trade so direct, he shall apply to any two justices or a stipendiary magistrate to hear the case, which they shall do with all their usual powers of summoning parties and compelling the attendance of witnesses. At the conclusion of the case the Court investigating shall send a report to the Board of Trade, containing a full statement of the case and its opinion thereon, accompanied by such report of or extract from the evidence, and such observations as it may think fit.‡

And, now, when any ship on or near the coasts of the United Kingdom, or any British ship elsewhere, has been *stranded* or *damaged*, and any witness is found in any place in the United Kingdom, or whenever any British ship has been lost or is supposed to have been lost, and any evidence can be obtained in the United Kingdom as to the circumstances under which she proceeded to sea, or was last heard of, the Board of Trade has the same powers to obtain an investigation of the case.§

It may also be mentioned here that where a British ship comes into collision with another ship, and the captain or person in charge fails to stand by and render

* 17 & 18 Vic., cap. 104, sec. 432.

† 17 & 18 Vic., cap. 104, sec. 14.

‡ 17 & 18 Vic., cap. 104, sec. 433.

§ 39 & 40 Vic., cap. 30, sec. 32.

assistance, or neglects to give to the other ship information of his ship's name and destination, an inquiry into his conduct may be held, and his certificate, if he holds such, may be cancelled or suspended.* The court of inquiry in these cases is not specified, but there is no doubt that the Courts as above described have jurisdiction in such matters.

By the Merchant Shipping Act, 1876, power was given to the Lord Chancellor of Great Britain to appoint three Wreck Commissioners for the United Kingdom, to inquire into shipping casualties at the request of the Board of Trade, with the same powers as two justices of the peace or a stipendiary magistrate have.† One such wreck commissioner has been appointed in the person of H. C. Rothery, Esq., and numerous inquiries have been held before him both in London and the provinces.

At all such investigations the Court is assisted by one or more assessors of nautical, engineering, or other special skill, appointed by the Court out of an approved list of such persons kept by the Board of Trade. On the list of nautical assessors there are about equal proportions of naval officers and captains of the mercantile marine.

When the Court is of opinion that the investigation is likely to involve the cancellation or suspension of any master or mate's certificate it is to appoint, if practicable, a person having experience in the merchant service to be one of the assessors. Each assessor must sign the report made to the Board of Trade on the conclusion of the investigation, or give his reason for declining so

* 36 & 37 Vic., cap. 85, sec. 10.

† 39 & 40 Vic., cap. 80, sec. 29.

to do.* It is difficult to understand how the Court, when it appoints the assessors, knowing nothing whatever of the merits of the case, should have any opinion as to whether the master or mate's certificates are likely to be endangered, so as to be able to appoint a merchant service captain as one of the assessors. In practice, however, any difficulty on this score is obviated by one of the assessors appointed almost invariably being a merchant service captain. Although the number of the assessors on an inquiry is not absolutely fixed by statute, the number usually appointed is two.

It is provided that in places where there is a local marine board, and a stipendiary magistrate is a member of it, inquiries into shipping casualties held there shall, if possible, take place before him.

The stipendiary is remunerated for his services out of the Mercantile Marine Fund.† It may be remarked that where there is a stipendiary magistrate in any seaport it seems to be the practice of the Board of Trade to appoint the investigation of all shipping casualties arising or coming within the neighbourhood or district to be taken before such stipendiary magistrate in the town where he presides. Although the Board of Trade has undoubted authority to authorise the holding of inquiries where it thinks fit,‡ it is often felt to be unfair that inquiries which naturally arise, or come within the district of a large seaport, should be removed often to a considerable distance, and at great inconvenience to some other seaport of perhaps equal or less importance. It may be further remarked that it seems anomalous and undesirable that the

* 39 & 40 Vic., cap. 80, sec. 30.

† 17 & 18 Vic., cap. 104, sec. 435.

‡ 39 & 40 Vic., cap. 80, sec. 33.

Board of Trade, which in the great majority of these inquiries before stipendiary magistrates appears almost as a prosecutor, should not only have absolute discretion to select and appoint the judge, but also to sanction his special remuneration.* These provisions do not tend to foster confidence in the independence of local Courts of Inquiry.

Inquiries into shipping casualties can, therefore, under the powers above fully detailed, be held either before a wreck commissioner, or before two justices of the peace, or a stipendiary magistrate, all assisted by one or more assessors of nautical, engineering, or other special skill, according to the nature of the case.

THE POWERS OF COURTS OF INQUIRY.

It cannot be too clearly understood that the primary object of these investigations is to *inquire* into the cause or reason of the casualty, and not to pronounce judgment on some one. For this purpose the Courts of Inquiry have vested in them ample powers to summon any witness before them, obtain any evidence, and by rules framed pursuant to the Merchant Shipping Act, 1876, to make the owners of vessels, and *any other persons* who appear to have been responsible in any way for the casualty, parties to the proceedings, or "defendants."

Under the Merchant Shipping Act, 1854, as we have seen, after the conclusion of the inquiry the Court had to send a report to the Board of Trade, and then its duties were at an end. The Board of Trade, however, had power, if such report were adverse to any master or mate, and showed that the loss or abandonment of, or serious damage to any ship, or loss of life had been

* 17 & 18 Vic., cap. 435.

caused by his wrongful act or default, to cancel or suspend the certificate of such master or mate.* By the Merchant Shipping Act, 1862, however, the above power of cancelling or suspending certificates, as vested in the Board of Trade, was transferred to the Court investigating the shipping casualty, and the power was further extended so as to include the certificates of engineers.

No certificate can be cancelled or suspended unless a statement of the case upon which the investigation is ordered has been furnished to the owner of the certificate prior to the investigation, nor unless one assessor, at least, expresses his concurrence in the report of the Court. The Board of Trade may re-issue and return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade.†

Every officer whose certificate is cancelled or suspended must deliver it up as directed, under a penalty of £50.‡

The Courts of Inquiry have power to make such order with respect to the costs of investigation, or any portion thereof, against any person before the Court, as they may deem just.§

Courts of Inquiry, therefore, now have power to order the cancellation or suspension of the certificates of masters, mates, and engineers, and also to order payment as against them, or any other parties before the Court, of all or a part of the costs and expenses of

* 17 & 18 Vic., cap. 104, sec. 242.

† 25 & 26 Vic., cap. 63, sec. 68.

‡ 17 & 18 Vic., cap. 104, sec. 242.

§ 17 & 18 Vic., cap. 104, sec. 436, and Rules of 1876 (Rule 26).

the investigation. This latter power, though not often exercised, is one which might operate practically as a heavy penalty, the costs and expenses of an inquiry being usually very heavy.

The Courts have the further duty of reporting on the case to the Board of Trade, and making such remarks thereon as they deem necessary. The action taken by the Board upon such reports is sometimes of a very serious nature to officers, owners, and others, which makes it additionally desirable for all persons in any way interested in a casualty to be properly represented at the inquiry.

There are several points which have arisen with reference to the power of the Courts holding investigations into shipping casualties, two of which are worthy of mention. The first is: What is such a "material damage" as will give the Courts power under sections 432 and 433 of the Merchant Shipping Act, 1854, to inquire? Several cases have been decided bearing on this point, and the principle which seems to be deducible from them is as follows:—If the damage sustained causes such injury to the hull, machinery, or equipment of the vessel as will necessitate a large outlay of money in repairs (having regard to the value and condition of the vessel at the time), although such damage may not under the circumstances have been of such a nature as to endanger the safety of the ship or the crew, it is a "material damage." Again, if the damage to the hull or any part of the machinery or equipment of the ship is of such a nature as, under the circumstances of the case, to make her unseaworthy, and so endanger the safety of the vessel or crew, although the repairing of such damage may involve but a comparatively small pecuniary outlay, it is a "material damage." The

same force it is believed must be given to the words "serious damage," used in the 242nd section of the same Act.

The second point is this.—Have the Courts power to cancel or suspend certificates on inquiries held under section 32 of the Merchant Shipping Act, 1876, where no "serious damage" has resulted from the casualty, having regard to section 242 of the Merchant Shipping Act, 1854 (see *ante*)? In the recent case of the S.S. "Ayton," Mr. Wreck Commissioner Rothery decided that he had this power, and accordingly suspended the master's certificate. On appeal to the Court of Queen's Bench, however, it was decided that the wreck commissioner had acted beyond his jurisdiction, and his decision or judgment was quashed.

PROCEDURE.

It now becomes necessary to consider what is the procedure adopted at inquiries into shipping casualties, and a few prefatory remarks are requisite to explain the present position of affairs in this respect.

By the Merchant Shipping Act, 1876, the Lord Chancellor had power given to him to make rules to regulate the procedure on inquiries, and to repeal, alter, or vary such rules, or to substitute others therefor. Shortly after the passing of that Act, the Lord Chancellor, in pursuance of such power, framed certain rules, which came into operation on the 1st day of October, 1876, and have remained in force up to the present time. During the writing of this chapter the Lord Chancellor has repealed these old rules, and enacted a new set, which, though in many respects identical with the old rules, still make such material alterations in the proce-

ture as to make it necessary to call especial attention to these changes. The plan which it has been considered best to adopt in order to effect this purpose is to state the procedure which has heretofore existed, calling attention in their proper order to the changes which will be made therein by the new rules.

When the Board of Trade, upon a consideration of the statements taken and reports made by their receivers of wreck or other officials, are of opinion that a formal investigation should take place, they notify to the wreck commissioner, magistrates, or other authority, their desire that such inquiry should be held before him or them, and furnish a list of names from which he or they choose assessors to assist on the inquiry. The Board of Trade heretofore, also caused a formal notice or statement of the inquiry to be served on the master and the certificated officers who were on board the ship at the time when the casualty happened. And if it was considered that the owner or any other person was in any way responsible for the casualty, then such owner or other person was also served with such formal notice. The service of this notice by the Board of Trade on the *master and certificated officers*, as above mentioned, has hitherto been *compulsory*; but, now by the new rule, No. 5, it is provided that the Board of Trade *may* cause such notice to be served on the owner, master, and officers of the ship, *as well as* upon any person who may in any way have contributed to the casualty. As in the large majority of inquiries the Board of Trade makes serious charges against the master or officers on board the ship at the time of the casualty happening, it seems only just that they should have due notice of the holding of the inquiry, as a matter of right, and not of favour.

When the exact time and place of the inquiry have been fixed, the Court before whom the inquiry is to be held issues witness summonses, and causes them to be served in any part of the United Kingdom upon such persons as it is intended to examine on the inquiry. The consequences of disobedience to such a summons are serious, and similar to those involved in disobedience to a subpoena issued out of the High Court of Justice. The wreck commissioner may now issue subpoenas for the attendance of witnesses either before himself, or any other before judge, which may be served and have effect in any part of the United Kingdom.

Hitherto upon an inquiry the Board of Trade, and any person against whom their counsel or solicitor might prefer a charge, as hereinafter mentioned, were parties to the proceedings, and needed no leave to appear before the Court. Now, however, by Rule 6, the following are the only parties to investigations, viz.: any certificated officer or other person on whom the Board of Trade has served a notice of investigation; also any person who shows that he has an interest in the investigation shall have a right to appear, and any persons, by permission of the judge, may appear, and thereupon become parties to the proceedings.

The inquiry on the day appointed is proceeded with whether the parties who have been served with the notice of holding the investigation are present or not. The Board of Trade is represented on these inquiries either by a barrister or a solicitor, who usually opens the proceedings by giving a brief outline of the circumstances of the casualty, to enable the Court to comprehend the scope and nature of the intended inquiry. There seems to be no express authority for this course of procedure; but so long as the persons

representing the Board of Trade content themselves with an impartial general statement of facts, without any argument or allegation, no reasonable objection can be raised against the practice. After this opening statement, the master, officers, and any other persons who were on board the ship at the time of the casualty, and who could give material evidence about it, were examined. This power has now been extended by the new Rules to include all witnesses whatsoever who can give material evidence on the matter in question, whether on board at the happening of the casualty or not. Hitherto, at the close of this evidence, the Board of Trade's counsel or solicitor stated in writing whether he had any, and if so, what, charge to make against any person, and against whom. If the person against whom any such charge was made was before the Court, the charge was handed to him or his counsel or solicitor, and he was thenceforward a party to the proceedings. If the person charged was not before the Court, a summons was issued requiring him to appear to answer the charge made against him, which was fully set out in the summons.

By the new Rules all this has been altered in a most unsatisfactory manner. After the Board of Trade's evidence has been completed, the Board's representative shall state in open Court upon what questions in reference to the causes of the casualty and the conduct of any persons connected therewith the Board desire the opinion of the Court, and if any person whose conduct is in question is a certificated officer, they shall also state in open Court whether in their opinion his certificate should be dealt with. Thus, it will be observed, in future no precise and written charge is to be preferred against an accused officer, and if he is not before the

Court he *may* have his certificate cancelled or suspended in his absence, and without any knowledge of an accusation having been brought against him.

It has been, hitherto, material to consider whether the investigation, both before and after the charge, was one continuous proceeding, or whether the portion of the investigation before the charge was made, was not a distinct and separate proceeding from the portion after the charge, although the proceedings both before and after the charge took place before one and the same Court.

On this point there was considerable diversity of opinion and practice when the rules, framed under the Merchant Shipping Act, 1876, first came into force. In some Courts counsel or solicitors for parties before the Court were not allowed to cross-examine the witnesses produced by the Board of Trade prior to a charge having been made; whilst in other Courts this right was accorded to parties before the Court, or their representatives, from the commencement of the proceedings, and irrespective of whether any charge were preferred or not. Mr. Wreck Commissioner Rothery adopted the latter of these courses, and decided that the whole investigation formed one proceeding, both before and after charge, and this practice has been, it is believed, almost universally adopted.

It is a question whether this course of procedure is in accordance with the true interpretation of these rules. However, whether this be so or not, there are many grave objections to urge against the practice. It seems most unjust that certificated officers, before they know what charge (if any) is going to be preferred against them by the Board of Trade, should be severely cross-examined by parties whose interests are often adverse

to their own, and then that the Board of Trade should (as is often the case) upon their own admissions or slips under cross-examination, frame a charge against them.

It seems, however, incredible that in England the judges who are to condemn or acquit in what may be a *quasi* criminal proceeding, should be allowed to interrogate and severely examine those who may and frequently do, the following day, stand in the same matter as accused persons before them, and particularly that they should so interrogate and examine before such person knows what (if anything) he is, or may be, charged with, and against what (if any) accusations he may have to defend himself. The practical effect of this procedure is, that the representative of the Board of Trade, from the usually long examination of the certificated officers by the Court, or assessors, becomes perfectly aware of the view which the Court takes of the casualty, and then he, most naturally, frames his charge in such a manner as he thinks will secure the sympathy of the Court and obtain a conviction. Indeed it is by no means an uncommon occurrence for the subject-matter of the charge to be suggested entirely by evidence extracted from the accused himself by his judges prior to his accusation. In the case of the S.S. "Brazilian," the Court—a stipendiary magistrate—after the Board of Trade solicitor had declined to prefer any charge against the captain, demanded that a charge should be preferred, and thereupon, notwithstanding the protest of the captain and his solicitor, proceeded to adjudicate upon this charge, and suspended his certificate. On appeal to the Court of Queen's Bench, however, this decision was brought up and quashed. Many other objections might be urged against this mode of procedure.

The new rules seem to point clearly to the fact that the whole investigation is one continuous proceeding, but they only intensify the injustice of this procedure, for so far as can be gathered from the ambiguous language used, the Court not only may suggest the charge to be preferred, but actually themselves in effect prefer a charge, and cancel or suspend a certificate thereon, without even communicating such charge to the accused person.

Heretofore, after the charge (if any) had been preferred, and all parties were or ought to have been before the Court, the Board of Trade produced any further witnesses they might wish to examine, the persons charged might then produce any witnesses on their own behalf, and the Court might allow any further material witnesses to be examined.

By the new rules, however, as there is no formal charge to be made, after the Board of Trade has verbally expressed its views on the case, the Board or any other *party* may *thereupon* produce further witnesses, who shall be examined, cross-examined, and re-examined in such order as the judge may direct.

The old rule as to the right of hearing by the Court was, that after the evidence was closed the parties charged or their counsel or solicitors, were first heard, and then the Court in practice usually permitted any person interested in the inquiry to address the Court, and finally the Board of Trade was heard. It will be observed that in case the defendants did not call any witnesses, they still, under this rule, have the usual and often valuable right of addressing the Court after the prosecution has been heard.

The new rule as to the right of hearing is that "when the whole evidence is concluded, the parties

shall be heard in such order as the judge may direct, and the Board of Trade shall be heard in reply."

The Court has power to adjourn from time to time and from place to place, as found convenient.

The judgment may be delivered either *viva voce* or in writing, and may be sent or delivered to the parties. If, however, the certificate of any officer is cancelled or suspended the judgment must be given in open Court.

As already stated, the costs and expenses of an inquiry are in the discretion of the Court, and may be awarded against the Board of Trade or any defendants.

Any party to the proceedings may give to any other party a notice in writing to produce any relevant documents in his possession, and if such documents are not produced, the person giving notice may produce secondary evidence of their contents. Any party may also give to any other party a notice in writing to admit any documents, and if such party does not admit the same he must bear the costs of proving them, unless his neglect or refusal to admit was under the circumstances justifiable.

Affidavits may, by permission of the Court, be used, if sworn as follows:—

In the United Kingdom before the judge of the Court, or a commissioner to take oaths in the Supreme Courts, or before a stipendiary magistrate or a justice of the peace for the county or place where the affidavit is sworn.

In any place in the British dominions beyond the United Kingdom, before any Court, judge, or justice of the peace, or person authorised to administer oaths in any Court in that place.

In any place out of the British dominions, before a British Minister, Consul, Vice-Consul, or notary

public, or before a judge or magistrate, his signature being authenticated by the official seal of the Court to which the judge or magistrate is attached.

It is important that shipmasters and officers should bear this power in mind, as in many cases where the casualty happens abroad valuable evidence may by this means be made available for their defence, which would otherwise be lost to them.

In computing the number of days within which any act is to be done relative to shipping inquiries, the same shall be reckoned exclusive of the first and inclusive of the last day, unless such last day fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also.

Any notice, summons, or other document issuing out of the Court may be served by post, the service of which may be proved by the oath or affidavit of the person serving the same.

From what has been already said it will be seen that the mode of procedure on these inquiries is unique—there being nothing like it in any judicial proceeding in England. It is, perhaps, most like an election commission in the inquisitorial nature of its procedure, but with this wide difference, viz., that if a witness before an election commission states all he knows fully and frankly, he receives an indemnity from any proceedings of a criminal nature being commenced against him. The masters and officers, however, who are cross-questioned and sifted on a Board of Trade inquiry as before detailed, *may have, and most frequently do have, a quasi* criminal charge preferred against them, and even after the decision on such charge they still remain liable in

many cases to actually criminal proceedings. That the present system is productive of much abuse and injustice is a matter well known to those practically acquainted with these shipping inquiries.

The following short remarks respecting the most common matters charged against masters and officers may, it is hoped, prove useful :—

The Lead.—Perhaps the most frequent charge made is that of neglecting to use the lead. It is of the utmost importance that those in charge of vessels should see that both the deep-sea and hand leads are ready for use, and that they be used whenever circumstances require it, and whenever soundings could assist in fixing the ship's position or in avoiding danger.

The Log.—Masters and owners should be careful before commencing a voyage to see that the ship's logs are in good working order; and during the voyage the log should be from time to time carefully set, and the time of setting and taking same, together with the distance run, should be accurately noted and recorded in the log-book. Patent logs, of improved construction, should be provided, but patent-log distances should be checked by the common log.

Verification of Position.—No occasion should be left unused to do this by cross-bearings if obtainable, and the details of the bearings, &c., should be carefully noted at the time in the log-book. Observations should be taken whenever possible, and details of the workings should be kept in a book. The master should get the mate to verify his observations and go through his working,

Compasses.—The master and owner should see that these are properly adjusted and in good working order before the voyage commences, and in steamers or iron

vessels the deviation cards supplied should be kept accessible in the chart-house. The master should from time to time, when possible, himself test the accuracy of his compasses by celestial observations, and also, if possible, by two fixed objects whose line of bearing is known.

Look-out.—Where possible a man should always be kept on the look-out ahead, but it is absolutely necessary to have a man there from sunset to sunrise, and during thick weather, or when the view ahead is obscured by canvas or otherwise from the officer in charge on the bridge, or other part of the vessel.

Too great a speed.—Whenever the weather comes in thick, or when the ship is in a doubtful or dangerous position, the speed of the vessel should, where possible and prudent, be decreased, and if necessary the vessel should be brought-to or stopped. This precaution especially applies at all times to rivers, roadsteads, and other places where there is special danger of collision.

Overloading and improper loading.—In cases of overloading it is not enough to show that the ship was not loaded in salt water to the centre of the Plimsoll disc, as that loadline is not one officially sanctioned. The master must in these matters exercise his own independent judgment as a prudent, cautious man, having regard to the time of the year, the nature of the cargo, the duration of the voyage, and other circumstances of the case.

Charts.—In most maritime Continental States the publishing of charts and sailing directions is under State control and supervision. But in Great Britain, the first maritime nation in the world, irresponsible persons are permitted to publish and sell charts and directions which are in many instances erroneous and

insufficient, whereby human lives and vast treasures are jeopardised. The onus of having good charts for the navigation of his vessel is thrown on the captain. The owners or master should provide good general charts of recent date for the entire voyage, and also good detailed large scale charts of the particular coasts or islands to be passed, and harbours, &c., likely to be entered during the voyage. Where possible the charts, both general and particular, should be those published under the direction of the British Admiralty.

Leaving the Deck.—At critical points in the voyage the master should, if possible, arrange to be on deck in charge of the vessel, particularly if his officers are not very efficient, or are strangers to him. When the master or an officer gives up charge of the deck, and any special light or other guide or warning is being approached or passed, he should call the special attention of the officer relieving him to the fact, and, where safe and advantageous, should show him the ship's position on the chart.

Sailing Regulations.—Most careful attention should be paid to these rules, which will be found *ante* page 76 *et seq.* The officer in charge should see that the proper regulation lights are burning during his charge, and that the steam whistle or fog-horn is kept going when circumstances require it. The rules for meeting and passing other ships should be so impressed on the memory as to enable them to be instantly acted upon where there is any danger of collision.

Before concluding this chapter, there are two other matters so nearly connected with the subject treated of that they demand a brief notice. They are Local Marine Board Inquiries and Naval Courts.

LOCAL MARINE BOARD INQUIRIES.

The constitution and functions of Local Marine Boards, generally, are set forth in the digest of the Merchant Shipping Acts. (See post).

If the Board of Trade, or any Local Marine Board, has reason to believe that any master, mate, or certificated engineer is from incompetency or misconduct unfit to discharge his duty, the Board may either institute an investigation or may direct the Local Marine Board at or near the place at which it may be convenient for the parties and witnesses to attend, to institute such inquiry. And thereupon such persons as the Board of Trade may appoint for the purpose, or the Local Marine Board shall, with the assistance of a local stipendiary (if any) or other competent legal assistant appointed by the Board of Trade, proceed to investigate the matter, and may summon the person charged to appear, but so as to give him full opportunity of making a defence either in person or otherwise. And the investigating body may summon witnesses, compel the production of documents, and do all necessary acts for carrying out the inquiry, and on the conclusion may, if they hold the person charged in default, either cancel or suspend his certificate. The costs are in their discretion, and at the conclusion of the investigation a report upon the case is made to the Board of Trade.

Where there is no Local Marine Board able or willing to hold the investigation, the Board of Trade may order the same to be instituted before two justices of the peace, or a stipendiary magistrate, and then the proceedings are just the same as in the case of the Board of Trade inquiries into shipping casualties, except

that the Board of Trade may direct that the person bringing the charge of incompetency or misconduct to the notice of the Board of Trade shall be deemed the party having the conduct of the case.*

The wreck commissioner does not seem to have authority to hold such investigation as above.

NAVAL COURTS.

Any officer in command of any of Her Majesty's ships on a foreign station, or in the absence of such officer, any consular officer may summon a Naval Court in the following cases:—

1. Whenever a complaint is made by a master or certificated officer, or one or more seamen of any British ship, of such a nature as to demand immediate investigation.
2. Whenever the interest of the owner of any British ship, or of the cargo, appears to such officer to require it.
3. Whenever any British ship is wrecked or abandoned, or otherwise lost at or near the place where such officer may be, or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned, or otherwise lost, arrives at such place.

The Naval Court consists of not more than five, and not less than three members, of whom, if possible, one is a naval officer not below the rank of lieutenant, one a consular officer, and one a master of a British merchant ship, and the other members shall be either British naval officers, or British merchant service captains, or British merchants.

* 17 & 18 Vic., cap. 104, secs. 241 and 242. 25 & 26 Vic., cap. 63, secs. 11 and 23.

The Court has full power of investigation, summoning and compelling the attendance of parties or witnesses, and the production of all necessary documents. An ample opportunity for defence shall be given to any person charged before the Court.

On the conclusion of the investigation the Naval Court has power to do any of the following acts :—1. If unanimous that the safety of the ship or crew, or the interest of the owner absolutely demands it, supersede the captain and appoint another master in his stead, but any such appointment must be made with the consent of the consignee of the ship if at that place. 2. Discharge any seaman, and order his wages or any part thereof to be forfeited. 3. Decide any questions as to wages, fines, or forfeitures. 4. Direct that the costs incurred by the master or owner of any ship in procuring the imprisonment of any seaman at a foreign port, or his maintenance during imprisonment, be paid out of the present or future wages of such seaman. 5. Send home offenders for trial. 6. And order the payment of costs as it deems right.

All orders of a Naval Court shall, where practicable, be entered in the official log-book of the ship to which the parties belong, and be signed by the President of the Court. The Naval Courts now have power to cancel or suspend the certificates of any masters or certificated officers charged before them with incompetency, gross misconduct, drunkenness, or tyranny, or where the loss or abandonment of or serious damage to any ship, or loss of life, has been caused by their wrongful act or default. The Naval Court shall send a report of the case, signed by the President, to the Board of Trade. Any person who obstructs or prevents a complaint, or the proceedings of the Court, is liable to a heavy

penalty, or to imprisonment for a period of not more than twelve weeks, with or without hard labour. And further, Naval Courts have the same power to try offences in a summary way under the Merchant Shipping Acts as two justices of the peace have in the United Kingdom; but any order for imprisonment must be confirmed in writing by the senior naval or consular officer of the place where the Court is held, and the place of imprisonment must be appointed by him.

UNSEAWORTHINESS.

WITHIN the past few years public attention has been greatly aroused on the question of unseaworthiness, and, under the influence of popular opinion, several statutory enactments have been passed bearing directly on the subject. It is intended in this chapter to briefly place before the reader the present condition of the law on this increasingly-important question.

COMPLAINTS BY SEAMEN.

By the Merchant Shipping Act, 1871 (Section 7), it is provided that any Court in which proceedings are taken against any seaman or apprentice belonging to any ship for desertion, or for neglecting or refusing to join or proceed to sea in his ship, or for being absent from or quitting the same without leave, has power, whenever it is alleged by one-fourth of the seamen belonging to such ship, or if the number of seamen exceed twenty, by not less than five of them, that such ship by reason of unseaworthiness, overloading, improper loading, defective equipment, or for any other reason, is not in a fit condition to proceed to sea, or that the accommodation in such ship is insufficient, to take all necessary steps to satisfy themselves concerning the truth or untruth of such allegation, and for that purpose may receive the evidence of the persons making the allegation, and summon any other witnesses whose evidence they may think it desirable to hear, and if satisfied that the charge is groundless proceed to adjudicate,

but if not satisfied shall cause the ship to be surveyed. No seaman, charged with desertion or quitting his ship without leave, has any right to apply for a survey under this section, unless, previously to his quitting his ship, he has complained to the captain or those in charge of the ship of the circumstances he alleges concerning the ship in justification of his acts or defaults.

The survey is to be held by one of the Board of Trade surveyors (if obtainable), or such other competent and impartial person as the Court may select. Such surveyor is to report in writing to the Court, and, if desired, also to give verbal evidence as to the condition of the ship. The written report of the surveyor is communicated to the parties, and the Court shall determine the question in dispute upon such report unless it be proved that the opinions expressed in it are erroneous. If it be proved to the satisfaction of the Court that the ship is not unseaworthy, the costs of survey shall be paid by the persons complaining, and may be deducted out of their wages; but, if it be proved that the ship is unseaworthy, or the accommodation is insufficient, the costs shall be paid by the master or owner.

The same kind of survey may be held by direction of any Naval Court which is holding any inquiry at which the question of unseaworthiness arises.

By the Merchant Shipping Act, 1873 (Section 8), it is provided that when any seaman or apprentice is detained on a charge of desertion &c., and it is proved that the ship *was* unseaworthy, or her accommodation *was* insufficient, the owner or master shall be liable to pay such seaman or apprentice such compensation as the Court, having cognizance of the matter, may award for detention and damages.

There is now, under the Merchant Shipping Act, 1876, an appeal from the decision of the Board of Trade, or other surveyor appointed by the Court as above mentioned, to one of the courts of survey as hereinafter mentioned.

It will be seen, from the above statement of the law, that there is a great power put in the hands of a discontented crew, whereby, if maliciously disposed, they can put the shipowner to a great deal of expense, and subject him to heavy loss and damage by delaying his ship on the most frivolous pretexts; and the only provision to meet this danger is the power given to the Court of ordering the complainants to pay the costs of the survey, &c., if the complaint turn out to be groundless; but with roving men like sailors this power is practically useless. There is also power, as will be seen hereafter, for the Board of Trade to demand security for costs and damages in certain cases before a ship will be detained and surveyed. These powers have not proved sufficient to deter ill-disposed persons from making frivolous complaints; hence, in a Bill now before Parliament it is proposed to punish seamen making frivolous, false, or malicious complaints, as to the unseaworthiness of their ship, with imprisonment for any period not exceeding one month, with or without hard labour on summary conviction.

WARRANTY OF SEAWORTHINESS TO SEAMEN.

By the Merchant Shipping Act, 1876, it is provided (Section 5) that in every contract of service, express or implied, between the owner of a ship and the master or seamen thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an

apprentice on board any ship, there shall be implied, *notwithstanding any agreement to the contrary*, an obligation on the owner of the ship, that such owner or the master of the ship and every agent charged with loading the ship, or preparing or sending her to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep the same in a seaworthy condition during the voyage in question. But the above obligation shall not subject the owner to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to the special circumstances, it is reasonable or justifiable so to do. Until this enactment there was no implied warranty as to the seaworthiness of the ship in a seaman's engagement, although there was such implied warranty in engagements between the shipowner and the passenger. The seaman is, therefore, now placed on an equality in this respect with the general public. It will also be observed that whilst the benefit under this section is expressly extended to the master, he is exempted from any liability; for the implied obligation is "on the part of the owner of the ship." Of course if it is through the fault of the master himself that the ship is unseaworthy at the time when any damage arise, the captain or his representatives will have no right of action against the shipowner. The effect of this section will, doubtless, be important, for it gives the whole crew a right of action for any damage they may sustain, either to goods or chattels or to their person, and also a right of action in case of death to their representatives under Lord Campbell's Act, where the damage or death occurred in consequence of the unjustifiable unseaworthiness of the ship.

SENDING UNSEAWORTHY SHIPS TO SEA A MISDEMEANOUR.

By the Merchant Shipping Acts, 1871 and 1875, the sending of a ship to sea in an unseaworthy condition under certain circumstances was made a misdemeanour, but these enactments have now been repealed, and the law on this question is contained in the Merchant Shipping Act, 1876 (Section 4) whereby it is provided that "Every person who sends or attempts to send, or is party to sending or attempting to send a British ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered, shall be guilty of a misdemeanour unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable; and for the purpose of giving such proof he may give evidence in the same manner as any other witness. Every master of a British ship who knowingly takes the same to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall be guilty of a misdemeanour unless he prove that her going to sea in such unseaworthy state was, under the circumstances, reasonable or justifiable; and for the purpose of giving such proof he may give evidence in the same manner as any other witness. A prosecution under this section shall not be instituted except by or with the consent of the Board of Trade, or of the Governor of the British possession in which such prosecution takes place. A misdemeanour under this section shall not be punishable upon summary conviction."

From a careful perusal of the above section it will be

seen that very extensive powers of prosecution are given; however, in comparison with the number of ships in our mercantile marine very few such prosecutions have, up to the present time, been instituted. The persons who may be liable are those whose duty it is to send a ship away, viz., the owners, managing owner, ship's-husband, master, and agent (not a mere broker or financial agent, but one who has some measure of responsibility at the port of loading or discharge or elsewhere for the ship's condition). It must be some person who from his position may fairly or reasonably be supposed to know the condition of the ship, and whose express or implied duty it is to do what is necessary to have her put in a seaworthy condition, or whom the law may fairly consider responsible for neglecting to see that this is done. Therefore a part owner, who takes no part in the management, but merely pays his share of expenses and accepts his share of profits, is not intended to be made liable under the above section.

The reader will have observed that if the person accused can show that "all reasonable means" were taken to insure the ship being sent to sea in a seaworthy manner, he is thereby held exonerated from blame. This exemption would, it is believed, cover a case of this kind—where a part owner who, whilst taking some part in the management, did not personally attend to or supervise any work done to the ship, and who gave the ship's-husband (whose duty it was to do so) full instructions to have all the necessary repairs done before the ship went to sea, and had reasonable grounds to believe that such repairs had been done under the direction of the ship's-husband, who, however, omitted to have the work done, or who neglected to see that the work was efficiently executed, whereby

the ship was sent to sea in an unseaworthy condition. Many other cases can be imagined in which this exemption would be a good statutory defence to criminal proceedings. The other defence which a person charged under this section may set up is, that the act was reasonable and justifiable under the circumstances. The whole question then would turn upon what were the special and peculiar circumstances which take the case in question out of the usual rule, and these must be such as to enable sensible and reasonably cautious and prudent men to say the act was under these circumstances reasonable and justifiable. There can easily be imagined circumstances in which a ship becoming unseaworthy at or near a place where repairs would be so exorbitantly excessive, or so difficult to effect, as to make it reasonable or justifiable to continue the voyage to another port, although the ship may not have been seaworthy, and it may have been in some degree dangerous to human life to do so. The burthen of proving these defences of course falls on the defendant.

The defendants in these cases may, contrary to the usual rules of English criminal law, give evidence on their own behalf. In some cases this may be a most valuable privilege; but it lays the defendant who declines to give evidence open to the damaging observation that he feels his own case to be so bad that he cannot support it with his oath.

It will be noticed that, before any prosecution under this section can be undertaken, the sanction of the Board of Trade must be obtained, or if in any British possession or colony, the sanction of the governor of such possession or colony. Such misdemeanour cannot be punished on summary conviction; that is to say, the

case cannot be tried before the magistrates, but *must* come before a jury.

The section above-mentioned does not prescribe the punishment which follows a conviction; but by section 40 of the same Act, it is provided that this offence shall be considered an offence under the Merchant Shipping Act, 1854, and section 518 of the last-named Act provides that every offence declared to be a misdemeanour shall be punishable by fine or imprisonment with or without hard labour.

DETENTION OF UNSEAWORTHY SHIPS.

Any British ship which is in a port in the United Kingdom, and by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading, is unfit to proceed to sea without serious danger to human life (having regard to the service for which she is intended), may be provisionally detained for the purpose of being surveyed, and either finally detained, or released under the following regulations:

The Board of Trade, if they have reason, on complaint made to them, or otherwise, to believe that a British ship is unsafe, may provisionally order her detention for the purpose of survey by competent persons, appointed by the Board, and notice of her detention, with the grounds thereof, must at once be served on the master. The owner or master of the ship may require that the Board of Trade surveyor shall be accompanied by such person as the owner or master may nominate out of a list of surveyors or assessors, appointed as hereinafter-mentioned, and on their joint opinion the Board of Trade *must* act; but if the two surveyors disagree, the Board may act as

it thinks fit. On receiving the surveyors' report, the Board of Trade may either release the ship or order her final detention, either absolutely, or until such conditions as are insisted upon by the Board of Trade have been complied with. A copy of the surveyors' report must be served on the master of the ship before final detention, and within seven days of such service the owner or master may appeal in proper form to the District Court of Survey, as hereinafter-mentioned (see form of notice of appeal post). When a ship is provisionally detained, the Board of Trade may at any time refer the matter to the District Court of Survey.

COURTS OF SURVEY.

A Court of Survey for a port or district shall consist of a judge, sitting with two assessors.

The judge shall be one of a list of persons approved from time to time for the port or district by one of Her Majesty's principal Secretaries of State, such persons being wreck commissioners, stipendiary or metropolitan police magistrates, county court judges, or other fit persons. In any special case in which the Board of Trade think it expedient to appoint a wreck commissioner, the judge shall be such wreck commissioner. The first list of the names of persons appointed under the Act shows that the persons appointed as judges are, in England, county court judges whose districts abut on the sea-coast, and the stipendiary magistrates or recorders of the important ports. In Scotland, the sheriffs of the maritime counties, or their substitutes; and in Ireland, the recorders of Dublin, Belfast, Cork, and some other large seaports, also the resident magistrates of seaports, or the chairmen of maritime counties. The

two assessors must be persons of nautical, engineering, or other special skill or experience, one of them being appointed in each case by the Board of Trade, and the other being chosen by the Registrar of the Court of Survey out of a list of persons periodically nominated for the purpose by the Local Marine Board of the port or district, or if no such board exists, then by a body of local shipowners or merchants appointed for that purpose by a Secretary of State. If there is no such list of assessors, then the second assessor shall be appointed by the judge of the Court.

The registrar shall, on receiving notice of an appeal, or a reference from the Board of Trade, immediately summon the Court in the prescribed manner. The registrars who have been appointed by a Secretary of State under this Act, are, except in London, the registrars of the county courts of the places at which the Courts of Survey are held, and their offices are the offices of the county courts; the registrars in Scotland are the sheriffs' clerks of the counties in which the Courts are held, and their offices are the offices of the said sheriffs' clerks. The registrars in Ireland are the clerks of the peace, or registrars, or other persons discharging the duties of registrars of the courts of the chairman of the counties in which the Courts of Survey are held, and their offices are the offices of the clerks of the peace, registrars, or other persons, as aforesaid. The hearing takes place in open court, and the judge and assessors may either survey the ship themselves or order some competent person to do so. The judge has power to order the ship to be finally or conditionally detained, but unless one of the assessors concurs in the order for detention the ship shall be released. The owner or master, or any person nominated by them, and also a nominee of the Board of

Trade, may attend at any inspection or survey which the Court may make or direct to be made. The judge shall send a report in writing to the Board of Trade, and each assessor shall either sign such report or give the Board of Trade the reasons for his dissent.

The Lord Chancellor of Great Britain has power to make, alter, and add to or vary rules to regulate the procedure of and incidental to these Courts of Survey, and such rules have the same force as the Act itself. The first rules framed under this power will be found set out fully at the end of this chapter.

COSTS AND DAMAGES.

If it should appear that there was no reasonable or probable cause for the provisional detention of the ship, the Board of Trade shall be liable to pay the shipowner his costs of and incidental to the detention and survey, and also compensation for any loss or damage sustained by reason of such detention or survey.

When a ship is finally detained, or if it appears that the ship at the time of her provisional detention was unsafe within the meaning of the Act, the owner of the ship shall be liable to pay to the Board of Trade their costs of and incidental to the detention and survey of the ship, and those costs may be recovered in the same way as salvage. In case of dispute these costs may be ascertained by any taxing-master or registrar of the Supreme Court of Judicature, at the request of the Board of Trade.

Any action against the Board of Trade for any costs or damages, as above-mentioned, may be brought against the Secretary in his official title, as if he were a Corporation sole.

When a complaint is made to the Board of Trade or a detaining officer that a certain ship is unsafe, the Board or the detaining officer *may* require the complainant to give satisfactory security for the costs and compensation which such complainant may become liable to pay. If the complaint, however, is made by one fourth (being not less than three) of the seamen belonging to the ship, and is not in the opinion of the Board or detaining officer frivolous or vexatious, such security shall not be required, and the Board or officer shall, if the complaint is made a sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained under the Act.

Where, owing to any complaint made to the Board of Trade or a detaining officer, a ship is detained under such circumstances as to make the Board of Trade liable to pay costs and compensation to the shipowner, then such complainant is liable to pay to the Board of Trade such costs and compensation as the Board incur or are liable to pay in connection with the detention or survey of the ship.

SCIENTIFIC REFEREES.

If any appeal, as above-mentioned, involves a question of construction or design, or if scientific difficulty or important principle be in question, then the Board of Trade *may* refer the matter to such one or more "scientific referees" (whose names are contained in a list from time to time approved by a Secretary of State) as may appear to possess the special qualifications necessary to decide the particular case. The referees may be selected by agreement between the Board of Trade and the appellant, and in default of

such agreement a Secretary of State shall appoint the Referee or Referees, who shall determine the question in dispute *instead* of the Court of Survey. If the appellant demands that the appeal be decided by a scientific reference, and shall give security for all costs and expenses incidental thereto, then the appeal shall be referred to a referee or referees selected as above-mentioned. The referees shall have the same power as judges of the Courts of Survey.

APPEAL ON REFUSAL OF CERTAIN CERTIFICATES
TO SHIPS.

Where a shipowner feels aggrieved by a declaration of a shipwright, surveyor, or engineer, surveyor under the Merchant Shipping Acts, or by the refusal of the surveyor to give such declaration, or by the refusal of a clearance certificate by an emigration officer under the Passenger Acts, or by the refusal of a certificate as to the sufficiency of the light or fog signals of the ship under the Merchant Shipping Act, 1862, the owner may appeal to the Court of Survey for the port or district where the ship for the time being is, and such matter in dispute is decided by the Court of Survey, which has power to order the necessary certificates and declarations to be furnished to the shipowner, or to confirm the refusal to supply them. Unless the judge otherwise order, the costs of and incidental to an appeal under this power follow the event.

FOREIGN SHIPS OVERLOADING.

Where a foreign ship taking in a part or whole of the cargo at a British port becomes unsafe from overloading or improper loading, she may be detained like a British

ship, but a copy of the order for provisional detention shall be served on the consular officer of the State to which the ship belongs, who exercises jurisdiction at or near the place where the ship is detained. Such consular officer may, at the request of the master or owner of the ship, require that the Board of Trade surveyor be accompanied by a person whom he selects, and if the surveyor and such person agree, then the ship shall be either detained or released accordingly, but if they disagree the Board of Trade may act on their own surveyor's sole report, against which the owner or master of the ship has an appeal to the Court of Survey before mentioned. On such appeal, however, the consular officer may, at the request of the owner or master, appoint some competent person to be the second assessor of the Court as hereinbefore particularly described.

GRAIN CARGOES.

By section 22 of the Merchant Shipping Act, 1876, it is provided: that no cargo of which more than one third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts, or nut kernels (all called shortly "grain cargo"), may be carried on board a British ship, unless such grain cargo be contained in bags, sacks, or barrels, *or secured from shifting by boards, bulkheads, or otherwise*, and the owner, or master, or agent for loading or sending any ship to sea, who *knowingly* disobeys this provision, incurs a penalty of £300, to be recovered on summary conviction.

There have not yet been many decisions on this enactment, but in a recent case it was held that *no matter what precautions the master took*, if, as a result, the grain cargo *shifted* (whether owing to stress of weather

or otherwise), he, the master, was liable to the heavy penalty before mentioned. This finding, it is conceived, is contrary to law, and will, it is confidently expected, not be followed. If this decision were followed, and the Board of Trade were to institute proceedings whenever a ship, carrying grain cargo in bulk, had a list, the position of shipmasters would be intolerable.

It seems a great pity that so vague and unsatisfactory an enactment should exist on so important a subject, and that the Board of Trade does not issue some rules and regulations to show those concerned what are considered sufficient and proper means to adopt for the prevention of "shifting" in grain cargoes. Many practical men hold that the only means of absolutely preventing shifting, is to make it compulsory to stow all grain in bags, with a bulkhead running fore and aft, and such a provision would be much more satisfactory, in some respects, than the above-mentioned condition of uncertainty.

DECK CARGOES.

The question of the danger of carrying deck loads, particularly in certain seasons of the year, has occupied much attention, and in order, if possible, to restrict the carrying of such cargoes on deck, it has been enacted by the 23rd section of the Merchant Shipping Act, 1876, that when cargo is carried on any uncovered space on deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage, then the ship is liable to dues for the space occupied by such cargo. Such space shall be ascertained by a Board of Trade or Customs' officer in manner directed by the Act, and shall be entered by him in the

official log, and also on a memorandum which he hands to the master; and the master must, on the ship's dues being demanded, produce such memorandum just as if it were the certificate of registry, and in default is liable to a penalty of £100.

By the 24th section of the same Act it is provided that after the 1st November, 1876, no ship, British or foreign, is to arrive in any port in the United Kingdom from any port out of the United Kingdom, between the last day of October and the 16th day of April, carrying as deck cargo any wood goods as follows:—

1. Any square, round, waney, or other timber, or any pitch pine, mahogany, oak, teak, or other heavy wood goods whatsoever.
2. Any more than five spare spars or store spars, whether or not made, dressed, and finally prepared for sea.
3. Any deals, battens, or other light wood goods of any description, to a height exceeding 3ft. above the deck.

And the master or owner (if privy to the offence) shall be liable to a penalty not exceeding £5 per hundred cubic feet of wood goods carried in contravention of the above provision. Such penalty may be recovered by action or on indictment, or if the amount does not exceed £100 on summary conviction before the magistrates.

The following defences may be set up by the master or owner:—

1. That the wood goods were considered necessary on deck on account of the springing of any leak, or of any other damage to the ship received or apprehended.
2. That the ship had sailed from the port of loading

such deck cargo at such a time before the last day of October as allowed a sufficient interval according to the usual duration of the voyage for the ship to arrive before that day at her port in the United Kingdom, but was prevented from so doing by stress of weather or other circumstances beyond his control.

3. That he sailed from the port of loading such deck cargo at such time before the 16th April as allowed, a reasonable interval (according to the ordinary duration of the voyage) for the ship to arrive at her port of discharge in the United Kingdom after such 16th April; but the said ship had arrived home before that day owing to an exceptionally favourable voyage.
4. That the ship was not bound to any port in the United Kingdom, but came into a port in the United Kingdom under stress of weather, or for repairs, or for any purpose other than the delivery of her cargo.

DECK AND LOAD LINES.

Owing to the numerous losses of British merchant ships, traceable directly or indirectly to overloading, the following provisions were introduced into the Merchant Shipping Act, 1876, with the avowed object of checking or diminishing this abuse, but owing to the permissive nature of the enactment, and the false appearance of authority given, it is much questioned whether it is productive of any good, whilst it often manifestly tends to mislead those for whose special protection it was intended.

As to the deck lines, it is provided by section 25 of

the Merchant Shipping Act, 1876, that every British ship (except ships under 80 tons register employed solely in the coasting trade, ships employed solely in fishing, and pleasure yachts) shall be permanently and conspicuously marked with lines of not less than twelve inches in length, and one inch in breadth, painted longitudinally on each side amidships, or as near thereto as practicable, and indicating the position of each deck which is above water. The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking. The lines shall be white or yellow on a dark ground or black on a light ground.

The following are the provisions as to the loadlines:—The owner of every British ship (except as aforesaid) shall, before entering outwards (if a foreign-going ship), mark on each side amidships, or as near thereto as practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line 18 inches in length, drawn through its centre; the centre of this disc shall indicate the maximum loadline in salt water to which the owner intends to load the ship on that voyage. There shall be inserted in the form of entry delivered to the collector or other principal officer of Customs, a statement in writing of the distance in feet and inches between the centre of this disc and the upper edge of each of the lines abovementioned, indicating the position of the ship's decks above such centre; and in default of entering these particulars any officer of customs may refuse to enter the ship outwards. A copy of these particulars must be entered in the official log, and also in the agreement with the crew, before it

is signed by any of them; and no superintendent of a mercantile marine office can proceed to engage a crew until this is done. When so marked with a load line it must be kept unaltered in that position until the ship returns to a port of discharge in the United Kingdom. There are similar provisions for fixing and indicating the load line of British coasting vessels (over 80 tons register), and once every twelve months the owner of such ship shall supply the principal officer of Customs at her port of registry with the relative particulars of load and deck lines respectively, as before-mentioned, and shall give such principal officer immediate notice of any renewal or alteration of the disc, and also the said relative particulars. And if there is any neglect or default in sending or delivering the statements and notices as above named, the owner is liable to a penalty not exceeding £100. Any owner or master of a British ship who neglects to cause his ship to be marked, or to keep her marked, as is above provided, or allows the ship to be loaded so as to submerge in salt water the centre of the disc, and any person who conceals, removes, alters, defaces, or obliterates, or suffers any person under his control so to do (except in a lawful manner, or to escape capture by an enemy) incurs a penalty not exceeding £100. If any of such marks are inaccurate, so as to be likely to mislead, the owner of the ship shall incur a penalty not exceeding £100.

GENERAL RULES FOR COURTS OF SURVEY,
*Made under the Powers of the Merchant Shipping
Act, 1876.*

Short Title.

1. These rules may be cited as "The Rules of the Court of Survey, 1876."

Commencement.

2. These rules shall come into operation on the 1st day of October, 1876.

Interpretation.

3. In the construction of these rules, words importing the singular number shall include the plural, and words importing the plural number shall include the singular number.

Courts of Survey, their Districts and Officers.

4. The Courts of Survey, with the districts assigned to each, and the persons authorised to act as judges and registrars thereof, and which have been approved by one of her Majesty's principal Secretaries of State, as set forth in an Appendix, shall be the Courts of Survey, and the districts, judges, and registrars of such Courts, for the purposes of the Merchant Shipping Acts, 1854 to 1876.

Publication of Rules.

5. These rules shall be published by her Majesty's

Stationery Office through its agents, and a copy shall be kept at the office of the registrar of every Court of Survey, and at every Custom-house and Mercantile Marine office in the United Kingdom, and may be perused thereat by the master or owner of any ship which may be provisionally detained under the Merchant Shipping Act, 1876, and by anyone deputed by him.

Publication of the Name of Registrar and of his Office.

6. A notice shall be put up in some conspicuous place in every Custom-house and Mercantile Marine office in the United Kingdom, containing the name of the registrar of the Court of Survey for that district, and the name of the street or place in which such registrar's office is situated.

Notice of Appeal.

7. Where the owner or master of a ship, hereinafter called the appellant, desires to appeal to a Court of Survey, he shall file at the office of the registrar of the Court of Survey for the London district, or for the district in which the ship is, hereinafter called the Court, a notice in the form following.

NOTICE OF APPEAL.

The Merchant Shipping Acts, 1854 to 1876.

In the matter of the ship

To the registrar of the Court of Survey for

Take notice that I [name and address] the master [or managing owner, or owner of shares] of the ship of the port of do appeal—

1. From the report of the surveyor appointed by the Board of Trade to survey the said ship.

Or—

2. From a declaration given by _____ a shipwright surveyor [or engineer] ; or [from the refusal of a shipwright surveyor [or engineer] to give a declaration under the provisions of the Merchant Shipping Act, 1854.

Or—

3. From the refusal of _____ an emigration officer [or as the case may be] to give a certificate of clearance under sections 11 and 50 of the Passengers Act, 1876.

Or—

4. From the refusal of _____ appointed by the Board of Trade under the provisions of section 30 of the Merchant Shipping Act, 1862, to give a certificate that the said ship is properly provided with lights and the means of making fog-signals. The address at which all notices and documents may be served by post or otherwise on _____ is

Dated this _____ day of _____ 187

(To be signed by the appellant).

Summoning of Court.

8. Immediately upon the filing of the notice of appeal, the registrar shall communicate the fact, by telegraph and letter, to the Board of Trade, who shall thereupon inform him whether they intend to have the appeal heard by a wreck commissioner, and, if so, on what day.

9. If the Board of Trade inform him that they do not intend to have the appeal heard by a wreck commissioner the registrar shall forthwith ascertain which of the other judges of the Court will hear the appeal, and on what day.

10. On ascertaining when the hearing will take place, the registrar shall, if there is a list of assessors for the Court, select therefrom the person who is, in his opinion, the best qualified to act as assessor on the appeal ; or if there is no such list, he will take the instructions of the judge as to the assessor to be appointed.

11. The Board of Trade shall appoint the other

assessor, and shall forthwith send the name and address of such assessor to the registrar.

12. If the ship is a foreign ship, the registrar shall give notice to the consular officer for the state to which the ship belongs, residing at or nearest to the place where the ship is detained, that, at the request of the appellant, some competent person will be selected by the consular officer to act as assessor.

13. As soon as the registrar has ascertained by whom the appeal will be heard, he shall summon the Court. He shall at the same time send notice thereof to the Board of Trade and to the appellant.

14. If the survey has been made on the complaint of any person, hereinafter called the complainant, the Board of Trade shall send to him notice of the time and place appointed for the hearing.

15. Previous to the hearing the Board of Trade shall forward to the registrar, to be produced as evidence at the hearing, an official copy of the report of the surveyor.

16. The Court shall, if practicable, be summoned to hear the appeal on a day not later than fourteen days from the filing of the notice of appeal.

Parties.

17. The Board of Trade and the appellant shall be parties to the proceedings.

18. Any other person, on entering an appearance, may, by permission of the judge, be made a party to the proceedings.

Notice to Produce.

19. Either party may give to the other a notice in writing to produce such documents (saving all just

exceptions) as relate to any matters in difference, and which are in the possession or control of such other party; and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

Notice to Admit.

20. Either party may give to the other party a notice in writing to admit any documents (saving all just exceptions); and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving such documents, whatever the result may be, unless the Court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the officer by whom the costs are taxed, a saving of expense.

Witnesses.

21. The wreck commissioner shall have power to issue subpoenas as nearly as may be in the form used in the High Court of Justice, and such subpoenas shall have effect, and may be served in any part of the United Kingdom.

Affidavits.

22. Affidavits may, by permission of the judge, be used at the hearing, when sworn to in any of the following ways, viz.:—

In the United Kingdom, before any judge or registrar of a Court of Survey, or before a person authorised to administer oaths in the Supreme

Court of Judicature, or before a commissioner empowered to take or receive affidavits, or before a justice of the peace for the county or place where it is sworn or made.

In any place in the British dominions out of the United Kingdom, before any court, judge, or justice of the peace, or any person authorised to administer oaths there in any court.

In any place out of the British dominions, before a British minister, consul, vice-consul, or notary public, or before a judge or magistrate, his signature being authenticated by the official seal of the Court to which such judge or magistrate is attached.

Proceedings in Court.

23. At the hearing, the Board of Trade shall first call their witnesses, and having done so shall state in writing what order they require the Court to make.

24. The complainant, if he has appeared, shall then call his witnesses, and having done so shall state in writing what order he requires the Court to make.

25. The appellant shall then call his witnesses, and having done so shall state in writing what order he requires the Court to make.

26. After the appellant has examined all his witnesses, the Board of Trade and the complainant may, on cause shown to the satisfaction of the judge, call further witnesses in reply.

27. After all the witnesses have been examined, the Court shall first hear the appellant, then the complainant (if any), and afterwards the Board of Trade.

28. The judge may adjourn the Court from time

to time and from place to place, as may be most convenient.

29. The judge may deliver the decision of the Court either *vivâ voce* or in writing; and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a Court merely for the purpose of giving the decision.

30. As soon as possible after the Court has come to its decision, the judge shall issue an order for the release or detention (either finally or on condition) of the vessel.

31. The judge shall send a written report to the Board of Trade.

Costs and Damages

32. The Court may, if the parties consent thereto in writing, decide whether costs, or costs and damages, are due, and to and from whom, and may assess the amount thereof; or the parties may, by consent in writing, refer the question to the wreck commissioner.

33. The order for the payment of costs, or of costs and damages, shall be in the Form No. 6 in Appendix B.

Computation of Time

34. In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also.

35. The days between Thursday next before and

the Wednesday next after Easter Day and Christmas Day, and the three following days, shall not be reckoned or included in the computation.

Services of Notices, &c.

36. Any notice, summons, or other document issuing out of the Court may be served by post.

37. The service of any notice, summons, or other document, may be proved by the oath or affidavit of the person by whom it was served.

ARBITRATION.

IN the settlement of disputes arising out of mercantile transactions, a reference to arbitration is usually by far the most expeditious, economical, and satisfactory remedy which the parties can adopt; for, in the first place, the great and vexatious delay which is necessarily caused by an appeal to a court of law is altogether avoided, in addition to which a large amount of costs is saved, and the ill-feeling which almost always accompanies litigation is avoided. There is, in fact, no class of cases which are more suitable for reference to arbitration than differences in commercial matters, which usually arise between persons who are on friendly terms with each other, and free from petty jealousies, and who do not wish to quarrel over pure matters of business. In questions arising upon policies of insurance, and charter-parties, and also in collision cases, and other similar disputes, it is also usually very desirable that a decision should be obtained at once, instead of allowing the question to stand over unsettled for a length of time, especially if (as is very often the case) the witnesses are seafaring men, whose attendance it is both difficult and expensive to obtain if they must be kept ashore in order to appear in court.

The advantages of a reference to arbitration (in suitable cases) are apparent, and accordingly nearly all of the "mutual" insurance societies insert in their rules a clause to the effect that all disputes between the society and its members shall be referred to arbitration, and a

similar provision is very frequently inserted in other mercantile agreements.

Although the reference of an *existing* dispute to arbitration has always been sanctioned and encouraged by the law, it was for a long time doubted whether an agreement to refer to arbitration any *future* disputes which might arise was binding; it was argued that such an agreement was an attempt to deprive the courts of law of their jurisdiction, and that as every man had a right to appeal to the law, he was not bound by his agreement to go to arbitration. It was, however, ultimately decided by the House of Lords that, although an *absolute* agreement *never* to sue in respect of any future dispute would not be legal or binding, still, if the agreement was worded in such a way as to make the reference to arbitration merely a preliminary proceeding (or "condition precedent") until the performance of which no action at law could be maintained, it would be *valid*; in other words, an agreement to refer future disputes is valid if it states that no action shall be brought *until after* the dispute has been referred to arbitration; then, if the award of the arbitrators is not performed, the person in default may be sued at law under the award.

By wording the intention carefully, a binding agreement may, therefore, be made to refer all disputes (both existing and future) to arbitration. The agreement which is most usually made, however, is simply an agreement to refer some existing dispute, or all present matters in difference, and an agreement of this kind is not subject to any technical rules. It is, however, very desirable that the agreement should be drawn out in proper form to avoid difficulties afterwards. (A form which will be found to be generally applicable is contained in the Appendix.)

The first thing to be considered is the matter in dispute. If there is only one dispute it is better to describe the dispute shortly in the agreement, and refer that dispute only to the arbitrator. If, however, there are more disputes than one, the simplest plan is to state in the agreement that "all matters in difference" between the parties are to be referred to the arbitrator.

The next, and most important, point is the appointment of the person or persons to arbitrate. The most usual practice is for each party to appoint an arbitrator, and then the arbitrators choose an umpire or third arbitrator. In case the third person chosen is an umpire, he only acts when the arbitrators fail to agree, but if he is appointed third arbitrator, he sits and hears the matter from the beginning with the other arbitrators. The parties may appoint some person upon whom they can jointly agree as the sole arbitrator; but he should, of course, be a person who is entirely impartial and disinterested as to the matter in dispute, have some knowledge of the law and practice relating to the subject, and the procedure in an arbitration. In important cases, where the question is simply one of law, it is sometimes better that a barrister should be the referee, but in all ordinary cases it is much more desirable to appoint a solicitor, an average adjuster (or an accountant, if the dispute is simply one of accounts), or other person who can bring to bear on the subject his practical business knowledge, and who has also some knowledge of the law and practice relating to arbitrations, to enable him to conduct the reference in a strictly legal and impartial manner, and prevent the parties from having to incur vexatious expenses afterwards through the ignorance of the arbitrator.

Having fixed upon an arbitrator, it may be well to

direct in the agreement how the evidence shall be given before him. If nothing is said on the subject, the witnesses should go personally before him to be examined, but if the facts are not disputed a considerable saving may be effected by the parties agreeing upon the whole of the facts, or some portion of them. For instance, they may admit the facts stated in letters, protests, affidavits, or declarations, or, if the *whole* facts are agreed on, they may be written out, and signed, and annexed to the agreement. If all the facts are agreed upon there is then no absolute necessity for the parties to appear before the arbitrator at all, unless they wish to state their arguments before him.

When the agreement to refer is completed and signed, it should be sent to the arbitrator, who then (unless the parties have agreed upon the whole of the facts and do not wish to appear before him) fixes a time for hearing the parties and their witnesses.

The agreement usually fixes a certain time within which the award must be made. The arbitrator's authority expires at the time so fixed, and he cannot extend the time unless the agreement gives him power to do so. As it often happens, however, that unforeseen circumstances may prevent the award being made within the time fixed, an agreement of reference usually contains a power to the arbitrator to extend the time for making his award. When this power is given it should be exercised before the expiration of the time named. The extension may be made in any way the arbitrator thinks fit, unless the agreement of reference specifies any particular manner; for example, by a memorandum written on the back of the agreement, which is the most usual way. Under an authority to extend the time for making the award, power is given

to increase the term of extension from time to time as often as may be necessary.

The agreement should always contain a clause providing that it shall be lawful to make the award a rule of any of the divisions of Her Majesty's High Court of Justice.

The arbitrator should hear all the evidence which the parties adduce. To refuse to hear evidence is a very dangerous proceeding, and it will vitiate the award if any evidence on the point in question was *necessary*. The arbitrator, however, has power to reject evidence if he considers it is *inadmissible* under the ordinary rules of the law of evidence, and in deciding this he must act on the ordinary rules of evidence observed in courts of law, and he may consult a solicitor, and adopt his opinion if he thinks fit.

The arbitrator must of course hear *both* sides. If a question is referred to arbitration on the understanding that the arbitrator is to decide without hearing the parties, and one party afterwards asks to be heard, and the arbitrator wishes to hear him, he must give notice to the other so that both may be present. But if a party wilfully neglects to attend after notice to do so, the arbitrator should give a second notice stating that he will on a certain day proceed with the reference whether such party attends or not.

If either party asks for time to enable him to obtain evidence, the arbitrator should adjourn the matter for a reasonable time.

If a witness refuses to attend, a judge's order may be obtained at the Judges' Chambers to compel his attendance in all cases where the agreement of reference provides that the submission may be made a "rule of court."

The arbitrator should always take notes of the

evidence adduced before him. When all the evidence has been taken he should inform the parties that he will proceed to make his award, but if he afterwards wishes to have further information, he may reopen the case and require further evidence to be adduced.

He may appoint any time or place for proceeding with the reference.

In preparing the award, the arbitrator (if he is not a lawyer) should always instruct a solicitor, and should not prepare the award himself.

The arbitrator, even after he has undertaken the reference and heard the evidence, cannot be compelled to proceed with it; he may refuse to go on whenever he thinks fit.

It sometimes happens that the arbitrator wishes to have the opinion of some person of experience or special knowledge on some question of *fact*; the tendency of the decided cases is in favour of this right to obtain such information privately and without the knowledge of the parties; the better plan, however, is to have the person examined as a witness. On questions of *law* the arbitrator has always the right to consult a solicitor and adopt his opinion.

If two arbitrators are appointed with power to appoint a third, and they cannot agree, a Judge at Chambers has power to appoint the third arbitrator.

When the arbitrator has once made his award, his power over the matter is at an end.

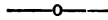
In case no amount has been fixed by agreement with the arbitrator, he is entitled to be paid a reasonable sum for his services, and he has a lien on the award until he is paid; but he cannot sue for his fees unless there has been an *express* promise to pay them. The usual course is for the arbitrator to complete his award,

and then (without stating to either side the decision contained in it) to give notice to both parties that it is ready to be delivered to either of them on payment of the fees, naming the amount, including the sum (if any) which may have been paid to the solicitor for preparing the award.

If the arbitrator makes any overcharge for his services, the person who pays the amount, in order to obtain the award, may recover back the excess.

If the party who is not ultimately liable to pay the fees pays the money to obtain the award, he can recover from the other party such sum as may be due from him.

APPENDIX OF FORMS.



No. 1.—Agreement for Sale of Ship.

AGREEMENT made this day of 187 , BETWEEN A B, shipowner (hereinafter called "the vendor") of the one part and C D, of , shipowner (hereinafter called "the purchaser") of the other part. WHEREBY the vendor agrees to sell and the purchaser agrees to buy the vessel called the of the port of of the measurement of tons register, or thereabouts, now lying at for the sum of £ to be paid as follows, viz., £ as a deposit on the signing hereof, £ cash on the day hereinafter appointed for completion of the purchase, £ by [approved] bill of exchange at months from the said day appointed for settlement, and the sum of £ by . The purchase to be completed on the day of next, at the office of at at which time and place the purchaser shall pay the amount of cash hereinbefore agreed to be paid, or such part thereof as shall then remain unpaid, and he shall also deliver to the vendor the said bills of exchange representing the remainder of the said purchase money, and the vendor shall thereupon execute and deliver to the purchaser a bill of sale of the said ship (such bill of sale to be prepared by and at the cost of the purchaser in the usual form). Immediately after completion of the purchase, the said ship, with what belongs to her, shall be delivered according to the inventory now produced by the vendor, and the said ship, together with her stores, shall be taken with all faults as they now lie, without any allowance or abatement. But in case the purchaser shall make default in settling for the said ship, on the terms hereinbefore provided, for the space of fourteen days after the day hereinbefore specified for completion of the purchase, the said deposit money shall (unless any delay is caused by the vendor) be forfeited for the sole use of the vendor, who shall be at liberty to resell the said ship either by public or private sale, and the deficiency, if any, on such

resale shall be made good by the purchaser, who shall be responsible for risks of every description subsequent to the present purchase, and for all charges that may be incurred in consequence of non-compliance with this agreement, and neither the broker nor any of the present vendors, his or their executors, administrators, or assigns, shall be in anywise accountable or liable to have any action whatsoever brought against them, or any of them, for the said deposit money paid and forfeited as aforesaid. The ship is to be at the risk of the purchaser immediately after he is put in possession of her. WITNESS the hands of the said parties the day and year first above written

No. 2.—Navigation Agreement, Appointing Ship's-Husband, &c.

AGREEMENT made this day of 187 BETWEEN A B, of shipowner, of the first part, C D, of shipowner, of the second part, and E F, of shipowner, of the third part. WHEREAS the said parties hereto (hereinafter called "the co-owners," which term shall include their executors and administrators), being joint-owners of the ship of the port of have mutually agreed that (address and occupation) (hereinafter referred to as "the ship's-husband") shall be the ship's-husband for the said vessel, and for the more satisfactory management thereof they have agreed together as hereinafter appearing.

NOW THIS AGREEMENT WITNESSETH that in pursuance of the premises that each co-owner hereby agrees with the other co-owners as follows:—

1. The ship's-husband shall have the sole management of the said ship in all matters relating to her employment (subject to the conditions hereinafter mentioned) and shall have full power from time to time to engage such person as master as he may think proper, and such appointment at his absolute discretion to revoke, and he shall have power from time to time to take such proceedings as he may think fit, to obtain possession of the ship, and her certificate of registry from any master whose appointment he may have revoked, and he shall be entitled to charge all proper disbursements in managing the ship, and shall be entitled to receive and enforce the payment and delivery to him of all moneys and securities

receivable on account of the ship, and shall pay all sums payable on account of the ship.

2. The ship shall be employed in such lawful trades as the ship's-husband may consider to be most beneficial.

3. The ship's-husband shall insure on the ship and her freight, such sums as may from time to time be agreed on in the name of the co-owners, or otherwise, and in the absence of any specific arrangement as to the amount to be insured, then the ship shall be insured for the full value thereof, and the freight shall be insured in such amount as the ship's-husband shall think fit for the benefit of all the co-owners, and the cost of the insurance shall be charged to the shares of the co-owners respectively, in the earnings of the said vessel.

4. The ship's-husband shall keep true accounts of all charter-parties, freights, profits, disbursements, and business of the ship, and of all moneys and remittances, which shall grow due, or be paid, or received on account of the ship, in books to be kept for that purpose, which shall be regularly posted up, and each of the co-owners shall, at all reasonable times, have liberty to inspect and take copies from such accounts, and the vouchers relating thereto.

5. The ship's-husband shall receive for his trouble in managing the ship [the annual sum of £ , or, a commission of per cent on the gross earnings of the ship] which he is hereby authorised to charge against the ship.

6. An account of every voyage shall be written in a book, and shall be signed by each of the co-owners, or his agent, and, after being so signed, the book shall be left in the custody of the ship's-husband, and each of the co-owners shall be bound by every such account, unless some manifest error shall be found therein, and signified to the several co-owners within six months after the date of such account, in which case (but not otherwise) such error shall be rectified.

7. The ship's-husband shall within days next after the receipt of the freight, on the termination of every voyage, make out a particular account of all profits of the ship, and the net balance shown by such account shall then be divided between the co-owners according to their respective shares in the ship, but a sum of not exceeding £ shall be left in the hands of the ship's-husband to meet the future working expenses of the ship.

8. In case of a total loss of the ship, the ship's-husband shall immediately upon the receipt of any money insured upon the ship, or her freight, or otherwise, pay to each of the co-owners his share of such insurance moneys, excepting a sufficient sum to meet future claims in respect of insurance premiums or other debts relating to the ship.

9. If the ship shall be unsuccessful on any voyage, or shall meet with such losses or damage that her gains are not equal to her losses on such voyage, then each of the co-owners shall within days after settling and adjusting the accounts by which such losses shall appear, pay his proportionate part of such losses to the ship's husband.

10. None of the co-owners shall, during the continuance of this agreement, purchase cargo or merchandise, to be carried in the ship on his own account, without the consent in writing of his other co-owners.

11. Any of the co-owners may recover by action any sum which may at any time be due to him from the others, or other of them, on account of the ship, on anything arising out of this co-ownership, notwithstanding anything herein contained to the contrary.

12. In case any of the co-owners shall wish to sell his shares in the vessel, or any part thereof, the same shall be offered to the other co-owners at a price to be named in writing by the co-owner who desires to sell his share, and such offer shall be sent by post to or left at the residence of each of the remaining owners, and such remaining owners, or any one or more of them, shall have the right to purchase such share at such price, upon signifying such intention within days after such notice shall have been received as aforesaid, and such notice and acceptance shall amount to an agreement for the sale and purchase of the said share, but in case none of the remaining owners accept such offer within the said time, or if more than one of them offers to purchase the ship, or if any one of them requires her to be sold by auction, then the entirety of the vessel shall be publicly advertised for sale by the ship's-husband (notice of the time and place of sale being given by him to each of the co-owners), and shall be absolutely sold by public auction, after the expiration of fourteen days from the time prescribed for accepting such offer, subject to such conditions as are usual in the sale of ships, and any of the said co-owners shall be at liberty to bid for and purchase the said vessel, and the co-owners shall, on receiving

their shares of the purchase money, execute all necessary bills of sale of their respective shares in the ship to the purchaser or purchasers, and deliver up the possession of the ship accordingly, and the costs of such sale by auction shall be paid by the co-owners according to their respective shares in the ship.

[A stamp duty of 6d. is payable on this agreement.]

No. 3.—Average Agreement.

AGREEMENT made this day of , 187 , BETWEEN the undersigned A B, on behalf of the owners of the ship of the first part, and the several other persons whose names are also subscribed hereto, being severally owners or consignees of goods or merchandise, now or recently laden in the said ship (and who are hereinafter called "the said consignees") of the second part, and C D, of , in the county of , hereinafter called "the guarantor" of the third part. WHEREAS the said ship sailed on the day of last, from the port of on a voyage to , laden with a cargo of , and during the said voyage she encountered stormy weather, and it became necessary, in order to preserve the said ship and cargo, to make certain voluntary sacrifices, and to incur certain expenses, which said sacrifices and expenses, or some part thereof, may form a charge upon the said ship or her freight, or they, or some part thereof, may form a charge against the cargo on board the said ship during the said voyage, or they, or some part thereof, may be a general average, to which the said consignees may be liable to contribute. AND WHEREAS the proportions in which the said sacrifices and expenses are payable by the owners of the said ship, freight, and cargo respectively, cannot be at present accurately ascertained, and in order that the delivery of the said goods and merchandise may not be delayed, the said consignees respectively have requested the said parties hereto of the first part to allow the said goods and merchandise to be delivered from the said ship before payment by such consignees respectively of the general and particular average charges, payable in respect thereof, which they have agreed to do on the said consignees executing the agreement hereinafter contained. NOW THIS AGREEMENT WITNESSETH that the said party hereto of the first part (on behalf of the owners of the said ship) hereby agrees with each of the said consignees that the respective goods and merchandise owned by or consigned to the said consignees respectively shall, upon payment

of the freight due in respect of such goods respectively, be discharged from the said ship in the state and condition in which they now are on board of the said ship, in order that the same may be delivered to the said consignees respectively (unless prevented by the dangers and accidents of the seas, rivers, or navigation, or the act of God, or restraint of princes or rulers, or the Queen's enemies, or fire, or other inevitable accidents). AND in consideration of the agreements hereinbefore contained the said consignees, severally and personally (and not as agents for any other person), agree with the said parties hereto of the first part to pay to them the proper proportions of the said general average and particular average losses and expenses in respect of the goods so owned by, or consigned to, the said consignees respectively, and all salvage or other expenses whatever, which they respectively, or the said goods owned by or consigned to them respectively, may be liable to bear under the circumstances hereinbefore referred to. AND for more easily computing, apportioning, and deciding the amount to be payable by the said consignees respectively, it is hereby agreed that the said average shall be settled and adjusted by Mr. , average adjuster, whose decision and adjustment shall be final, and the said consignees respectively agree to pay to the said parties hereto of the first part such sum of money as the said average adjuster shall, by his said adjustment, to be signed by him, state to be due from the said consignees respectively. AND in consideration of the said parties hereto of the first part having, at the request of the said guarantor, entered into the agreements hereinbefore contained, the said guarantor hereby agrees with the said parties hereto of the first part to guarantee that the said parties hereto of the second part respectively will duly pay all sums of money which may become due from them respectively, according to the provisions hereinbefore contained.

[If payment is not to be guaranteed by a third person, omit the words in italics.]

[A stamp duty of 6d. is payable on this agreement.]

No. 4.—Agreement by Holder of Bill of Lading to indemnify Captain against all other Claims to the Goods.

AGREEMENT made this day of , 187 , BETWEEN A B and C D, of (hereinafter called the said merchants), of the first part, E F, captain of the vessel , of , now in the port of , (hereinafter called the said captain), of the second part [and T H of

(*hereinafter called the guarantor*) of the third part]. WHEREAS the said merchants are the holders of Bills of Lading, which have been endorsed to them, representing certain goods forming [a portion of] the cargo of the said vessel on her voyage which has just been completed. AND WHEREAS the said captain, having reason to believe that claims will be made on him by other persons in respect of the said goods, has refused to deliver the said goods, and the said merchants [*and guarantor*] have agreed to give the said captain the guarantee hereinafter contained, on his agreeing to deliver the goods to the said merchant. NOW THIS AGREEMENT WITNESSETH that the said captain hereby agrees to deliver to the said merchant the goods named in the said bills of lading, and in consideration of the premises the said merchants [*and guarantor*] hereby, jointly and severally, agree with the said captain, and also as a separate agreement with the owners of the said ship, that they or one of them, or the executors or administrators of them, or one of them, will hold the said captain and owners respectively harmless and indemnified against all claims which may be made in respect of the said goods by any other person, or persons, and will pay to the said captain, or owners, all damages, losses, costs and expenses which they, or any, or either of them, may suffer, or pay in consequence of the said goods having been delivered to the said merchants. Witness the hands of the said parties.

[If it is not intended to obtain the signature of a surety, omit the words in italics.]

[Stamp duty, 6d.]

No. 5.—Agreement by Consignee and Surety to pay Freight.

AGREEMENT made this day of , 187 , BETWEEN A B, Master mariner of , on behalf of the owners of the ship , of the first part, C D, the owner or consignee of certain goods now on board of the said ship, and who is hereinafter called the consignee of the second part, and E F , of , who is hereinafter called the guarantor of the third part. WHEREAS certain goods are now on board of the said ship, and in the possession of the captain thereof, subject to a lien for freight, demurrage, and other charges according to the charter-party for the voyage of the said ship, which has just been completed. AND WHEREAS the said consignee has requested the captain of the said ship to deliver the said goods to him before payment of the said lien, which the said captain has

agreed to do upon the said consignee and the said guarantor entering into the agreement hereinafter contained. NOW THIS AGREEMENT WITNESSETH that the said A B hereby agrees to allow the said consignee to receive, from the said ship, the said goods, and in consideration thereof the said consignee, and the said guarantor, hereby jointly and severally agree with the said A B, and also (as a separate agreement) with the owners of the said ship, that they, or one of them (or the executors, or administrators of them, or one of them), will pay to the said A B, or the owners, of the said ship, the amount of freight, demurrage (if any), and all other charges (if any), which the said A B, or owners of the said ship, are now entitled to receive in respect of the said goods.

Witness.

[Stamp duty, 6d.]

No. 6.—Notice of Stoppage for Freight, &c. (pursuant to the Merchant Shipping Amendment Act.)

To A B, Wharfinger (or Warehouse Owner).

I HEREBY give you notice to detain the undermentioned goods now landed, or about to be landed, from the ship until the freight and other charges to which the same are liable (as specified below) shall be paid, and, if you fail to do so, you will be liable to make good any loss thereby occasioned.

Dated this day of 187

(Signed) C. D.

Master (or "Owner") of the said Ship.

Marks (if any).	Quantity of Goods.	Description of Goods.	Amount of Freight, &c., Claimed.

N.B.—On delivering this notice a receipt should, therefore, be obtained, signed by the wharfinger, or warehouse owner, or their clerk or agent, on an exact copy of this notice.

No. 7.—Notice to Wharfinger to sell Cargo for Freight.

To A B, Wharfinger.

I, THE undersigned C D owner of the ship , hereby give you

notice that the goods which were landed from my said ship, on or about the day of last (and were delivered into your custody subject to a lien for freight and other charges due to the owners of the said ship), have now been in your custody for the space of ninety days, as the said lien on the said goods has not been discharged, I hereby give you notice that I require you to sell by public auction the said goods, or so much thereof as may be necessary to pay the amount due to me for freight and other charges in respect of the said goods, and also the expenses of sale, and all customs or excise duties owing in respect of such goods, and the rent, rates, and other charges, due to you in respect of such goods.

Dated this day of 187 .

(Signed)

Owner of the said Ship.

No. 8.—Power of Attorney appointing Agent to Act Abroad.

KNOW ALL MEN by these presents, that I, A B, of , in the county of , in England, shipowner, do hereby make, constitute, and appoint C D, and E F, of , in the [kingdom] of , merchants, my true and lawful attorney, and attorneys, agent, and agents, jointly, and each of them separately, for me, and in my name, to [here insert the powers which it is wished to give to the agent, for example—"Take upon himself, or themselves, at the port of , or elsewhere in , the entire management of the said ship or vessel , of which I am the owner, and to enter into any charter-parties, or other contracts for the employment of the said ship, and to execute, or cause to be executed, any repairs that may be necessary to the said ship, and to enter into any contracts for the same, and generally to act in the management of the said ship in my name, as if I was myself present, and in their or his absolute discretion to dismiss the master of the said vessel, and to appoint another shipmaster in his stead"]. And I authorise my said attorney, and attorneys, and each of them, to collect, sue for, and receive from G H, and every other person liable in that behalf in the said [kingdom] of , all sums of money, debts, property, and effects, now owing, or which hereafter may be owing, or belonging to me, and to settle and adjust all accounts, disputes, and demands respecting the same, and in case of need to leave any disputes to reference, to appoint an arbitrator or arbitrators, to sign, or execute any agreement of reference, and to compound with any debtors, and in my name to sign

receipts, or other sufficient discharges. And for me, and in my name, as occasion may require, to commence and prosecute any actions, suits, or other proceedings at Law or in Equity, and by all lawful means to attack, seize, or arrest the persons, moneys, goods, debts, estate, or effects of the said G H, and any other debtor or debtors, or other person or persons, liable in that behalf, wheresoever the same may be, according to the laws or customs of the place or places; and to proceed therein in every respect, so as to obtain effectual payment and delivery thereof. And to act in the premises from time to time as effectually as if I was personally present and did the same. And (as may be found expedient) to prosecute any such proceedings to judgment, or to suspend, or put an end thereto, in any stage. And to defend any action or actions, suit or suits, respecting the premises. And I hereby give to my said attorney, *and attorneys jointly, or either of them separately*, full power to nominate and appoint one or more substitute or substitutes, attorney or attorneys, agent or agents, under them or him, for all, or any of the purposes aforesaid, and the same to revoke, and again reappoint, and another, or others, in their or his stead to depute, which nomination or substitution shall continue, notwithstanding my said attorney *or attorneys* should die or leave aforesaid. And I hereby give to my said attorney, *and attorneys jointly, or either of them separately*, and to his *or their* substitute or substitutes, my full authority in the premises, hereby confirming whatsoever shall be lawfully done by virtue thereof. IN WITNESS whereof I have hereunto set my hand and seal at aforesaid, this day of , in the year of Our Lord one thousand eight hundred and .

Signed, sealed, and delivered }
in the presence of }

[If only one person is appointed to act under the Power of Attorney, the words in italics should be omitted. It will, however, generally be found more expedient to appoint two persons if possible.]

[Stamp duty, 10s.]

No. 9.—*Agreement to refer Disputes to Arbitration.*

AGREEMENT made this day of , 187 , BETWEEN A B, of , of the one part, and C D, of , of the other part. WHEREAS disputes have arisen between the said parties hereto respecting [here state concisely the nature of the dispute which is to be referred to arbitration] it is hereby agreed to refer the said dis-

pute [and all matters in difference between them] to the award and determination of *and of such third arbitrator as the said two arbitrators shall, by writing under their hands, to be endorsed on this agreement before they proceed in this arbitration, appoint to act with them; or of any two of such three arbitrators, so as the arbitrators, or any two of them, make and publish an award in writing, duly signed, concerning the matters referred, ready to be delivered to the parties or either of them (or to their respective executors or administrators, if they or either of them should die before the award is made) before the expiration of [three] calendar months from the date hereof, or before any other day to which the arbitrators, or any two of them, shall by writing hereupon endorsed enlarge the time for making the said award. The costs of preparing this agreement, and of the reference and award shall [abide the event of the award]* and this submission may be made a rule of any division of the High Court of Justice at the instance of either of the parties hereto without notice to the other, and that [the witnesses shall be examined on oath]† the arbitrators or any two of them may proceed *ex parte*, in case either party after reasonable notice shall neglect to attend on the reference without having previously shown to the arbitrators, or any two of them, what the latter shall consider sufficient cause for omitting to attend. That each of the said parties shall produce before the arbitrators all documents under his control, which the arbitrators, or any two of them, may require relating to the matters referred. And the said parties shall do all other acts necessary to enable the arbitrators to make a just award. And the said parties, their executors and administrators, shall abide by and perform the said award. And none of them shall bring any action, or take any legal proceedings whatsoever against the arbitrators, or any of them, concerning the matters referred. In WITNESS whereof the said parties have hereunto set their hands the day and year first above written.*

[If only one arbitrator is appointed the words in italics should be omitted.]

[Stamp duty, 6*d.*]

* If it is wished to leave the question of costs also to the arbitrator, omit these words in brackets, and insert "be in the discretion of the arbitrator."

† If the facts are not disputed, and it is wished to save expense by admitting them, these words in brackets can be omitted and the following substituted, "the statement of facts hereto annexed and signed by the said parties shall be admitted as evidence without further proof, and the arbitrators, or any two of them, may if they, or he, shall think fit, make *their* or his award without hearing either of the said parties or receiving further evidence.

No. 10.—Bottomry Bond.

KNOW ALL MEN by these presents that I, A B (hereinafter called the shipmaster), master of the ship or vessel called the _____, of the port of _____, am held, and firmly bound unto C D, of _____, in the county of _____, merchant, hereinafter called the lender, in the sum of £ _____ of lawful British money, to be paid to the said lender or his certain attorney, executors, administrators, or assigns, for which payment well and truly to be made I bind myself, my heirs, executors, and administrators, and also the said ship or vessel, her tackle, apparel, or furniture, and the freight to be earned by her on the voyage after mentioned, firmly by these presents, sealed with my seal. Dated the _____ day of _____ one thousand eight hundred and _____. WHEREAS the said vessel, lately arrived at _____ from _____ aforesaid, after having sustained damage [here describe the damage], and being in want of repairs and provisions to enable her to proceed on her voyage to _____, the said shipmaster, in order to be enabled to pay for the said repairs and the necessary disbursements and expenses of the said vessel, and to enable him to proceed on the said intended voyage, hath requested the said lender to lend the sum of £ _____ for the aforesaid purposes, which the said lender hath accordingly done on the hazard and adventure of the said vessel, on her said intended voyage, and the said shipmaster hath taken up the same on the hazard and adventure aforesaid. Now THE CONDITION of the above obligation is such that if the said ship or vessel do, and shall, with all reasonable and convenient speed, sail on the said intended voyage to _____, and proceed without deviation (the perils, damages, accidents, and casualties of the seas and navigation excepted), and if the above bounden shipmaster, his heirs, executors, or administrators, or the owners of the said vessel do, and shall, within ten days after the said vessel shall arrive at her port of destination on her said intended voyage, well and truly, pay, or cause to be paid, unto the said lender or his agent, attorney, executors, administrators, or assigns, the said sum of £ _____ of lawful British money, together with £ _____ sterling per centum bottomry premium thereon; or if, on the said voyage, the said vessel shall be utterly lost, cast away, or destroyed, in consequence of fire, enemies, pirates, storms, or other the unavoidable perils, dangers, accidents, or casualties of the seas and navigation, to be sufficiently shown or proved by the said

shipmaster, his executors or administrators, or by the owners of the said vessel, their executors or administrators, THEN the above written bond or obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered, by the
said shipmaster, in the presence of }

A. B.

DIGEST OF THE MERCHANT SHIPPING ACTS.

As the Merchant Shipping Acts are now not only very numerous, but also very voluminous, the following digest has been so prepared as to compress, it is believed, all the practically important provisions of the Acts into the smallest possible compass compatible with clearness.

For purposes of reference the following abbreviations of the various Acts cited are used in this Digest:—

Title of the Act.	Abbreviation.
The Merchant Shipping Act, 1854, 17 and 18 Vict. cap. 104.	1854
The Merchant Shipping Act Amendment Act, 1855, 18 and 19 Vict. cap. 91.	1855
The Admiralty Court Act, 1861, 24 Vict. cap. 10.	Ad. Ct. A., 1861
The Merchant Shipping Act Amendment Act, 1862, 25 and 26 Vict. cap. 63.	1862
Colonial Shipping Act, 1868, 31 and 32 Vict. cap. 129.	C. S. A., 1868
County Courts Admiralty Jurisdiction Act, 1868, 31 and 32 Vict. cap. 71.	Co. Ct. Ad. Jur. Act, 1868
Merchant Shipping (Colonial) Act, 32 Vict. cap. 11.	1869-C.
The Merchant Shipping Act, 1871, 34 and 35, Vict. cap. 110.	1871
The Merchant Shipping Act, 1872, 35 and 36 Vict. cap. 73.	1872
The Merchant Shipping Act, 1873, 36 and 37. Vict. cap. 85.	1873
The Merchant Shipping Act, 1876, 39 and 40 Vict. cap. 80.	1876

The Board of Trade.

The Board of Trade is the department appointed to superintend matters relating to merchant ships and seamen, and to carry into execution all Acts of Parliament affecting them, and to issue all necessary documents and forms which, if properly sealed or authenticated, shall be received as evidence without further proof, and be exempt from stamp duty.

Persons who forge the seal or distinguishing marks of the Board, or fraudulently alter any form of the Board, are guilty of a misdemeanour, and persons using or selling unauthorised forms incur a penalty not exceeding £100.

All consular, customs, local marine, and shipping officers, &c., shall make such reports and furnish such information as the Board requires, and such officers may inspect official logs, &c., and take copies thereof, call for lists of persons on board any ships, muster any crew, and call upon the master to give any explanations. Any person refusing or neglecting to obey these powers incurs a penalty not exceeding £20.

The Board may appoint inspectors to report upon accidents, &c., to ships, breaches of regulations, and as to whether hull and machinery of any steam ship are sufficient and in good condition. Such inspectors shall be able to board any ship, and inspect her, and also inspect any premises; they may summon witnesses, compel production of books and papers, and administer oaths. Witnesses are allowed their expenses, but are subject to a penalty for non-attendance, &c. Any person impeding inspectors in the exercise of their duty is liable to a penalty of £10 (1854, ss. 6 to 16).

Ownership.

The following provisions as to the ownership, measurement, and registry of British vessels, are applicable to the whole of her Majesty's dominions (1854, s. 17).

A British ship must belong wholly to natural-born British subjects, or denizens, or naturalised persons not having taken an oath of allegiance to a foreign Sovereign or State, or to bodies corporate with principal place of business in British dominions (1854, s. 18).

Every British ship must be registered, except ships not exceeding 15 tons burden, for navigating British coasts and rivers, and

Canadian fishing or coasting vessels of 30 tons burden, and no officer of customs shall grant a clearance or transire to a non-registered ship (1854, s. 19).

Measurement.

Certain rules for measurement of ships to be registered are given (1854, ss. 20, 21, 22, 23, 24, and 1855, s. 14).

When the tonnage is once ascertained, it is to be ever after deemed the tonnage of the ship (s. 26).

Remeasurement of ships already registered *may* be made, but is not to be compulsory (1854, s. 271).

The Board of Trade has power to remeasure engine-rooms improperly enlarged. The Board appoints officers, and makes regulations for the measurement of ships. Tonnage rates under local Acts or powers may now be levied on the registered tonnage (1862, s. 4), and ships of a foreign country adopting the British rules of measurement need not be remeasured in this country (1862, s. 60).

Particulars to be marked on British Ships.

The name shall be marked on each bow, and the name and port of registry on the stern, in large letters, and in a distinct manner. The official number and registered tonnage shall be cut on her main beam. A scale of feet shall be marked on each side of the stern and stern-post, in incised and painted letters or figures, to denote the draught. Heavy penalties are imposed if the scale of feet is inaccurate so as to mislead, or if the said names or marks be concealed, removed, altered, or defaced, or permitted so to be, except for the purpose of avoiding capture by an enemy. The above provisions do not apply to fishing boats duly lettered, numbered, and registered (1873, s. 3).

Every British ship (except coasting ships under 80 tons, fishing ships, and pleasure yachts) shall be plainly marked on each side amidships, with conspicuous longitudinal lines twelve inches in length and one inch in breadth, the upper edge indicating the level and position of each deck above water, and shall, as to foreign-going ships, before entering outwards, be marked on each side amidships with a conspicuous circular disc 12 inches in diameter, with a horizontal line 18 inches long, drawn through its centre, such centre to indicate the maximum depth in salt water to which the owner

intends to load his ship during that voyage, and a statement in writing shall be given to the principal officer of customs of the distance in feet and inches between the centre of the disc and the deck lines above it. The customs officer, in default of such statement, may refuse to enter outwards. A copy of this statement *shall* be entered by the master in the agreement with the crew before signing, and also in the official log. Such marks must not be at all altered until ship returns to a discharging port in the United Kingdom. The above provisions as to load line apply to coasting vessels (over 80 tons register), save that the owner may alter the position of the disc after giving notice of his intention so to do. And instead of giving notice, &c., each voyage, the owner must, once in every twelve months, immediately before the vessel proceeds to sea, make a statement, in writing, of the distance between the deck and load lines to the principal officer of customs of the port of registry, and in default incurs a penalty of £100. Any owner or master neglecting to have his ship marked as above, or loading his ship so as to submerge the centre of the disc in salt water, or any person who conceals, removes, alters, or defaces any of the above marks except to avoid capture by an enemy, and any owner who allows inaccurate and misleading marks on his ship, shall incur a penalty not exceeding £100 (1876, ss. 25, 26, 27, 28).

Registry of British Ships.

The chief officer of customs at a port is the person appointed to register ships, and he keeps a register-book containing the particulars of the ships belonging to such port and the transactions respecting them. The port where a ship is registered shall be considered her port of registry, or to which she belongs (1854, ss. 30, 32, 33). Her Majesty may, by Order in Council, declare certain foreign ports to be ports of registry (1873, s. 29).

A British ship shall not be described by any name other than that by which she is for the time being registered. Alteration of name must first be formally approved by the Board of Trade, and then the alteration must forthwith be made in the register-book, the certificate of registry, and on the bows and stern of the ship. When an unauthorised alteration has been made in a ship's name, the Board may alter back to the right name, and no ship ceasing to be registered shall be again registered in any other than the original name without express permission. Any person disobeying these

provisions as to name shall incur a penalty not exceeding £100, and ships may be detained for non-compliance with such provisions (1871, s. 6). A foreign ship which becomes British must (under penalty of £100) be registered in her foreign name unless altered with permission of the Board of Trade (1873, s. 5). Application for registry must be made by the person actually requiring to be registered, or his duly-authorized agent, in writing, or by the duly-authorized agent under the seal of a body corporate. The ship must be surveyed before registry by the proper officer, and certificate, Form A obtained (1854, ss. 35, 36).

The property in a British ship is divided for the purposes of registry into 64 shares, and no person shall be registered as owner of any fractional part of a share. No more than 32 persons can be registered as owners at one time. Five persons may be registered as joint owners of a ship or of a share or shares therein. Joint owners are considered as one person for the purpose of registry, and cannot transfer their joint share in severalty. A body corporate may be registered by its corporate name (1854, s. 37). No person can be registered until he has made a declaration of ownership before the Registrar of the Port or a Justice of the Peace (Form B, 1854 s. 38). A secretary of a body corporate shall make a similar declaration (Form C, 1854, s. 39). On the first registry of a ship, in addition to the declaration of ownership if British built, the builder's certificate must be produced; if foreign built the builder's certificate if possible or, if not, the bill of sale. When the foregoing particulars are satisfactorily furnished the registrar shall register the ship. No notice of trusts shall be entered in the register-book, and the registered owner has full power to dispose of the ship or his share (1854, s. 40—42). Subject to the provisions of registration and ownership equities may be enforced against owners and mortgagees of ships exactly as in respect of any other personal property (1862, s. 3).

Certificate of Registry.

On completion of the registry the registrar shall grant a certificate of registry, containing the name, port, and particulars of the ship and her owners (Form D, 1854, s. 44). Changes of owners or masters shall be from time to time endorsed on the certificate of registry by the registrar. A new certificate may be granted on the old one being delivered up. If the registry is lost, and the ship is in the United

Kingdom, a new one; or if abroad a provisional one from any British registrar will be granted on a satisfactory declaration of loss being made. Such provisional certificate of registry must be delivered up on the ship arriving in the United Kingdom, and a new one must be obtained from the port of registry, under penalty of £50. The certificate is for the lawful navigation of the ship, and cannot be detained for any title, lien, charge, or interest; and its recovery can be summarily enforced before a magistrate, who, if it be not recovered, will grant a certificate of its loss. If a master or owner uses an improper certificate, he is guilty of a misdemeanour, and the ship is liable to seizure or forfeiture. When a ship is lost, or ceases to be a British ship the owners shall (under penalty) inform the registrar of her port, and the master shall (under penalty) deliver up the registry to the registrar, if at home, or to the British consular officer, if abroad. If a ship lying at a foreign port becomes the property of British owners, the British consular officer shall grant a provisional certificate for six months, on arrival in the United Kingdom (1854, ss. 45 to 54). A ship ceasing to be registered must be surveyed before re-registration (1873, s. 6).

Transfer of Ships or Shares therein.

Ships or shares therein are to be transferred by bill of sale in the prescribed form. The transferee's execution must be attested by one witness at least (Form E, 1854, s. 55). Transferees of ships or shares, whether individuals or bodies corporate, shall make a declaration of ownership similar to that made by original owners (Forms F and G, 1854, ss. 56, 57). Bills of sale must be registered at the port of registry. On the death of an owner his executors or administrators must make a declaration and produce the probate or letters of administration to the registrar. If on the marriage of any female owner the property passes to another, such other shall produce the certificate of marriage, and make a declaration of ownership and identity. On an owner becoming bankrupt or insolvent, the trustee must produce proof of his appointment, and make declaration of ownership. In all the above cases the registrar shall then register such transmission. The form of these declarations is prescribed (Form H, 1854, ss. 58, 59, 60).

The registrar retains surveyors and builders' certificate, &c., and declarations (1854, s. 61). If on death or marriage of an owner the property in a British ship devolves on any unqualified person, such

person may apply to one of the superior courts to direct a sale and distribution of the proceeds. Such application must be made within four weeks, otherwise the ship will be forfeited to the Crown. On application of any interested party, the courts may prohibit any transfer of, or dealing with, a ship, or shares, and the registrar of her port on being served with any such order shall obey the same (1854, ss. 62, 63, 64, 65).

Mortgages.

A registered ship, or any share therein, may be mortgaged by an instrument in a prescribed form, and such instrument, on production to the registrar, shall be recorded in the register-book (Form I). Mortgages are registered according to the exact time of their production to the registrar. On the production of mortgages, with formal endorsed receipt of the money lent, an entry of discharge is made in the register-book. Where there are several mortgages, priority of registration gives the prior right. A mortgagee is not deemed an owner except to avail himself of his security. Every registered mortgagee has power to sell his security, but subsequent mortgagees can only do so with the concurrence of prior mortgagees. Mortgagees' rights are not affected by any act of bankruptcy of their mortgagors. Registered mortgagees can transfer in a prescribed form (Form K) endorsed on the mortgage. This transfer is registered. On transmission of a mortgagee's interest by death, bankruptcy, or marriage, a declaration of the person entitled must be made, and his right authenticated, as herein-before mentioned, in the case of transmission from an absolute owner (Form L), and then the registrar will enter the new mortgagee's name on the register (1854, ss. 66 to 75).

Certificates of Mortgage or Sale.

The registrar may, on application of registered owner, grant certificate for mortgage or sale of any ship or share abroad. This certificate shall state the name of the person to exercise the power of sale or mortgage, together with the maximum amount of mortgage money or minimum purchase price, the specific place for exercise of the power, and the limit of time for its exercise. The certificates are to be in a prescribed form (Forms M and N). The owner can neither sell nor mortgage his ship or share until such certificate is

returned to the registrar and cancelled, and such return is duly registered. If the certificate of sale or mortgage is lost, the registrar, upon production of satisfactory proof of loss, shall grant a fresh certificate, or make necessary entries of the facts in the register-book. If a power has been given for sale or mortgage at a specific place or places, it may be revoked by an instrument in prescribed form (Form O), to be handed to the registrar, who apprises the registrar or consular officer at such specific place or places of such revocation (1854, ss. 76 to 83).

Registry anew and Transfer of Registry.

When a ship is so altered as not to correspond with the registered description, the registrar shall, on application and receiving surveyor's certificate, alter the register, or order the ship to be registered anew. If this be not done, the ship shall no longer be recognised as a British ship. On a change of ownership, registry anew may be granted if required. The registry of a ship may be transferred from one port to another if all persons interested and registered make a declaration of their desire for such transfer. The old certificate of registry shall be delivered either to the registrar of the old or new port of registry, and the registrar of the old port shall forward full particulars to the registrar of the new port, who shall enter the same on his register and grant a new certificate; from which time the ship shall be deemed to belong to the new port, and the name of the new port shall be painted on the ship's stern. Such transfer shall not affect the rights of any owners or mortgagees (1854, ss. 84 to 91, and 1855, s. 12).

Registry Miscellaneous.

Any person may inspect any register-book of ships on payment of a fee of one shilling. Registrars are not liable in damages or otherwise for loss accruing to any person in consequence of their official acts or defaults, unless such loss has happened through their neglect or wilful act. Every registrar in the United Kingdom is to send every month to the Registrar-General a complete list of all transactions entered during that time on his register. The Board of Trade provide all shipping forms free of charge, or for a trifling sum, and may alter forms and issue any necessary instructions as to registry of ships (1854, ss. 92 to 96). If any unauthorised form be used, the

registrar may refuse to record the same (1855, s. 11). The registrar has power, in certain cases of difficulty, to dispense with declarations and other evidence. Registrars or governors of British possessions may allow an unregistered ship to pass from one British port to another. In cases of infancy and lunacy of a person having an interest in any ship or share therein, the guardian or committee may make all necessary declarations and do all necessary acts. Any person beneficially interested in a ship, though not registered, is liable to statutory penalties. Any person who forges or fraudulently alters any of the before-named shipping documents, or any official entry or endorsement on the same, is guilty of a felony (1854, ss. 97 to 101).

National Character

No clearance or transire shall be granted to any ship until the master has declared to the Custom House officials the nation to which he belongs, and in default of such declaration the ship may be detained.

If any person or ship unlawfully uses the British flag (save to escape capture), or if any person conceal the British or assume a foreign character of or for any British ship, or if any unqualified person acquires ownership in a British ship, or if any person makes a false declaration of ownership, his interest in such ship shall be forfeited to the Crown (1854, ss. 102, 103). Any person making a false declaration or statement to a registrar is guilty of a misdemeanour. Officers seizing *bonâ fide* on reasonable grounds are not liable for any damage arising from their act. The red ensign and the Union Jack with a white border are the only national colours to be hoisted and worn by British merchant ships, under pain of £500 penalty, and any improper colours may be forcibly removed (1854, ss. 105, 106).

Evidence.

Certified copies of ships' registers and declarations shall be furnished by the registrar, for one shilling per copy, and be accepted in all judicial proceedings as *primâ-facie* proof of all matters contained or recited therein (1854, s. 107). The Registrar-General's certified copies are also so accepted (1855, s. 15).

Local Marine Boards.

Boards for carrying out the provisions of Merchant Shipping Acts under the supervision of the Board of Trade shall be elected at important ports triennially, on the 25th day of January, and consist of the Mayor or Provost and Stipendiary Magistrate of the port, as *ex-officio* members, four members selected by the Board of Trade from the local gentlemen, and six members are elected by the owners of foreign-going and home-trade passenger ships* registered at the port. Occasional vacancies are filled up within a month after they occur. The preparation of the voting lists for members of the Marine Board is entrusted to the chief officer of customs of the port, and such lists are revised every three years by two justices appointed by the Mayor or Provost of the port. The expenses of revision are borne by the Board of Trade. Every male person on the revised list of voters is eligible to become a member of the Marine Board. An error in the election does not vitiate acts done by the Marine Board. Minutes of the business of the Boards are kept. The Board acts generally under the supervision of the Board of Trade. The Boards determine what numbers shall be quorums. If any Local Marine Board fails to discharge its duties, the Board of Trade may assume its duties or direct a new election. The Board of Trade on complaint made to it may alter improper or insufficient arrangements made by any Local Marine Board (1854, ss. 110 to 121).

Local Marine Boards shall establish in their ports Mercantile Marine offices, and appoint superintendents and deputy superintendents (hereinafter referred to as "superintendents"), and officers thereto, and control their business; and every act done by or before a deputy superintendent duly appointed, shall have the same effect as if done by or before a superintendent (1854, s. 122, and 1862, s. 15).

The Board of Trade shall exercise control over such officers,

* By 1854, sec. 2, "Home-trade ship" is defined as follows:—"A ship employed in trading or going within the following limits, viz.—The coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the Continent of Europe between the river Elbe and Brest, inclusive."

"Foreign-going ship" is defined as follows:—"A ship employed in trading or going between some place or places situate beyond the following limits, viz.: The coasts of the United Kingdom, the Islands of Guernsey, Jersey, Sark, Alderney, and Man, and the Continent of Europe between the river Elbe and Brest inclusive."

"Home-trade passenger ship" is defined as follows:—"Every home-trade ship employed in carrying passengers."

particularly financially. Such officers shall keep registers of seamen, facilitate engagement and discharge of crews, secure the presence on board of crews at the proper time, facilitate apprenticeships, and generally assist in such matters. Certain fees appointed by the Board of Trade are charged on engagements and discharges of crews, and an approved list of such fees must be hung in every Marine Office. The ship-owner pays these fees, and then deducts a small fixed amount from the wages of each member of the crew. Any superintendent or clerk who receives any remuneration, save as authorised, shall incur a penalty of £20, and be liable to dismissal. Marine Offices may be conducted at Custom Houses or in London at Sailors' Homes, with consent of the Board of Trade (1854, ss. 123 to 130). At ports where no Marine Board exists, the Board of Trade may establish Mercantile Marine Offices (1873, s. 10).

Examinations and Certificates of Masters and Mates.

Local Marine Boards shall appoint examiners, and institute examinations at their ports for masters and mates, and the Board of Trade may arrange for examinations at ports where no Marine Board exists (1854, s. 131, and 1862, s. 17). The Board of Trade issues rules for conducting these examinations, and applicants for certificates pay certain prescribed fees. On candidates passing the examination and satisfying the examiners as to character, &c., the Board of Trade will, unless dissatisfied with the examiner's decision, grant certificates of competency. Certificates of service as master or mate are to be granted to persons who served as masters or mates respectively before 1st January, 1851, and certificates of service for home-trade passenger ships are to be granted to persons who have served as masters or mates in such ships before 1st January, 1854. No foreign-going ship, or home-trade passenger ship, shall, under a heavy penalty, proceed from the United Kingdom to sea without both masters and mates having proper certificates of competency or service. Certificates for foreign-going ships are considered higher than, and available as, corresponding certificates for home-trade ships. The Registrar-General of Seamen shall keep a register of all grants, alterations, suspensions, or cancellations of certificates. Whenever any certificated officer proves the loss of his certificate, a copy will be given to him. Any person who fraudulently makes a false representation to obtain for himself or another a certificate, or who

forges, or fraudulently alters, or lends any certificate, is guilty of a misdemeanour (1854, ss. 132 to 140).

Engineers.

Every steamship requiring a certificated master must also have a certificated engineer. There are two grades, first and second class. Foreign-going ships of over 100 horse power shall have two certificated engineers of first and second grades respectively. Foreign-going ships of less than 100 horse power, and home-trade passenger steamships, must have engineers of at least second grade. The Board of Trade hold examinations for engineers, and grant certificates of competency, upon which certain fees are payable. To any engineer who served before 1st April, 1862, as first engineer in any foreign-going steamship of over 100 horse power, or been engineer in the Royal Navy or East India Company, a certificate of service as first-class engineer shall be **granted**; and to any engineer who, before the same date, served as second engineer in any foreign-going ship of more than 100 horse power, or as first or only engineer on any other steamship, or has attained the rank of first-class assistant engineer in the Royal Navy, shall be entitled to a second-class engineer's certificate of service. And all the before-mentioned provisions generally applicable to certificates of masters and mates apply to engineers' certificates (1862, ss. 5 to 10).

Colonial certificates to masters, mates, and engineers may be made of equal force with those of the United Kingdom by an Order in Council (1869, C, s. 8).

Apprenticeships to the Sea Service.

Marine superintendents are to facilitate apprenticeships in every way, and may receive certain prescribed fees therein. Apprenticeship indentures of pauper boys are to be executed by the boy (who must be over twelve years old) and his master in the presence, and with the approbation, of two justices. All apprenticeship indentures for sea service are exempt from stamp duty, and must be recorded by some marine superintendent within seven days of execution. The assignment or cancellation of apprenticeship, or the death or desertion of apprentices, must be promptly notified to the Registrar-General, or some superintendent, and recorded forthwith. Apprentices and their indentures are to be brought before the

marine superintendent before each voyage of a foreign-going ship (1854, ss. 141 to 145).

Engagement of Seamen.

The Board of Trade may grant licenses to suitable persons to act as agents in procuring seamen and apprentices for ships. Any person acting as above without a license, or any person so employing unlicensed persons, or receiving seamen illegally supplied, is liable to a penalty of £20 for each seaman illegally engaged. Any person demanding or receiving other than the prescribed remuneration from seamen for procuring employment incurs a penalty of £5.

Masters of ships (except coasting vessels under 80 tons) engaging seamen shall enter into an agreement in a prescribed form signed by the master first, and then the seamen. The agreement must contain particulars of the nature and duration of the voyage, number of crew, date of commencement of employment, capacity in which the seaman is to serve, amount of wages, scale of provisions, and nature of special discipline (if any) (1854, ss. 146 to 149). Instead of the nature and duration of voyage the maximum length of the engagement may be given, and the parts of the world not to be visited stated.

Agreements in writing may be made by owner or master of fishing vessels with any person employed for remuneration by share of profit in the adventure. They must be signed before the superintendent, who shall read and explain same, and attest the signatures (1873, ss. 7, 8).

For all foreign-going ships, agreements hiring crews when made in the United Kingdom are to be signed in duplicate before the superintendent, except by substitutes engaged for deserters, &c., who will sign as early as possible after engagement before a witness.

Running agreements for two or more short voyages may be made for foreign-going ships, but no such agreement shall extend beyond the next following 30th of June or 31st December, or the first arrival of the ship in the United Kingdom after either of those dates. Engagements and discharges of seamen of foreign-going ships under running agreements are to be before superintendents, and the master of such shall, on each return to the United Kingdom, endorse on the agreement either that no discharges or engagements of seamen are made then, or if any, the particulars

thereof, and the agreement shall in due course be delivered to the superintendent, who shall (if in order) also endorse it as regular and redeliver to the master. Running agreements shall be duly reported to the Registrar-General and certain prescribed fees are to be paid in respect thereof (1854, ss. 150 to 154).

In home-trade ships the agreement with the crew or single seaman may either be signed before the superintendent as before mentioned, or after full explanation before any witness before, or as soon after, putting to sea as possible. Owners of several home-trade ships may make agreements which enable them to transfer seamen from one vessel to another (1854, ss. 155, 156).

The penalty for shipping seamen without a properly executed agreement, and for neglecting to report to the nearest superintendent any change in the crew before the vessel leaves the United Kingdom is £5 for each offence (1854, ss. 157, 158).

Seamen engaged in the Colonies are to be shipped before a superintendent (if any) or Customs' officer; if shipped beyond British jurisdiction before the British Consular officer (if any) at the port (1854, ss. 159, 160).

On signing the agreement the masters of foreign-going ships shall produce their own and their mates' certificates to the superintendent who gives them a certificate thereof for production to the Customs' officials on clearing outwards. In case of running agreements the masters and mates' certificates must be produced before each voyage. On arrival at the port of destination or on discharge of crew in United Kingdom, the master shall, within forty-eight hours, deliver up the agreement to the superintendent, who shall give him a certificate to produce to the Customs' officials on clearance inwards (1854, s. 161).

In home-trade ships (over 80 tons burthen) no agreements are to be made extending beyond the next following 30th June or 31st December, or the first arrival of the ships in the United Kingdom after such dates. And all agreements made within six months of the two above-mentioned dates shall (under penalty) within 21 days from signing be handed to a superintendent, and in home-passenger ships the master shall at the same time produce the certificates of himself and his mates, and thereupon the superintendent shall grant a clearance certificate (1854, s. 162).

The owner of a home-trade ship may now enter into an agreement (in prescribed form) with individual seamen to serve in one or more of his ships, which agreement need not expire on 30th June or

31st December; but a duplicate of such agreement shall be sent to the Registrar-General within 48 hours of signing (1872, s. 16).

All alterations of agreements are void unless made with full consent of all parties and formally attested. The fraudulent alteration of an agreement is a misdemeanour. Seamen may bring evidence as to the contents of an agreement without producing the original or a copy. At the commencement of every voyage the captain is (under penalty) to put up a copy of the agreement on board his ship so as to be accessible to the crew. Seamen improperly discharged before the commencement of the voyage, or before one month's wages are earned, shall, in addition to wages actually earned, recover compensation not exceeding one month's wages (1854, ss. 63 to 167).

Allotment of Wages.

All stipulations for the allotment of seamen's wages are to be inserted in the agreement, and the allotment notes are to be in a form prescribed by the Board of Trade. If an allotment note is made in favour of a seaman's wife, father, mother, grandfather, grandmother, child, grandchild, brother, or sister, such person may recover the amount due in the County Court, or summarily, unless the owner can prove that the seaman has forfeited, or ceased to be, entitled to such wages. A wife who deserts her children, or grossly misconducts herself, is not entitled to recover (1854, ss. 168, 169).

Discharge and Payment of Wages.

All seamen discharged in the United Kingdom, from foreign-going ships, must (under penalty) be discharged before a superintendent. In home-trade ships this is optional. Twenty-four hours before discharge the master is to hand to the superintendent, or if not discharged before a superintendent, then to the seaman himself, a full and true account (in a prescribed form) of all wages due to him, and all intended deductions therefrom. On discharge, masters are to give seamen certificates of discharge, and to return certificates to mates (1854, ss. 170 to 172).

Superintendents may decide disputed questions between masters and crews if the parties in writing so desire. In any matter before a superintendent, he may require the owners, or master, or crew, to

produce ship's books and papers, or other documents in their possession, and require, and take any evidence (1854, ss. 173, 174).

When the crew is discharged, mutual releases between the master and crew are given in a prescribed form, and the superintendent gives the master a voucher for the amount paid (1854, s. 175).

On every discharge before a superintendent, the master shall make a report on the seaman's character, in a prescribed form, or state that he declines to do so. Making a false report, forging, fraudulently altering, or fraudulently using a forged or altered report is a misdemeanour (1854, s. 176).

Remittance of Wages, and Savings' Banks.

The Board of Trade have power to give facilities for remitting seamen's wages, and to establish and conduct Savings' Banks for the deposits of seamen, or their wives, or families (1854, ss. 177 to 180).

Rights to Wages.

The right to wages and provisions commences either with actual commencement of work, or date named in agreement for its commencement, whichever first happens. Any agreement by a seaman abandoning any of his rights respecting his wages, &c., is inoperative (1854, ss. 181, 182). This does not, however, apply to seamen engaged in salvage service, where special agreements may be made (1862, s. 18). The right to wages does not depend on the earning of freight; but the right is lost if the seaman does not exert himself to the utmost during a shipwreck for ship and cargo. Seamen's wages are paid up to the date of shipwreck, or of being left abroad ill, but not whilst they are imprisoned, or refuse to work (1854, ss. 183 to 186).

Seamen's wages in home-trade vessels are to be paid within two days of the termination of the agreement, or time of discharge. And in all other ships (except in southern whalers, and ships on share agreement) within three days of delivering cargo, or five days after the seaman's discharge, whichever first happens; but a seaman on being discharged is entitled to have paid on account one-fourth of the amount due to him (1854, s. 187).

Recovery of Wages.

Seamen may recover their wages before magistrates summarily if not more than £50 beyond costs, unless the owner is bankrupt, or the ship be under arrest, or sold by order of a Court, or unless the case is referred by the magistrates, or neither the owner or master resides within twenty miles, when the claim may be made in the superior court (1854, ss. 188, 189). The Court of Admiralty has jurisdiction over claims of seamen for wages and masters for wages and disbursements, but without costs, if less than £50 be claimed; and County Courts, having Admiralty jurisdiction, can adjudicate *inter alia* in wages claims up to £150. If actions are brought without leave in the Court of Admiralty, or other superior court, which could and might have been brought in the County Court, then the plaintiff shall not have his costs (Admiralty Courts Act, 1861, s. 10; County Courts Admiralty Jurisdiction Act, 1868, ss. 3, 9). No seaman can sue abroad for wages of a voyage to terminate in the United Kingdom, unless in case of discharge, or unless he proves that he has had to leave the ship in danger of his life. Masters have the same rights and remedies respecting their wages as seamen have. Parish relief supplied to a seaman's family is chargeable upon his wages up to a certain proportion. Notice of such charge is to be given to the owners, and enforced on the seaman's return (1854, ss. 190 to 193)

Wages and Effects of Deceased Seamen.

If a seaman dies on a voyage the master is to take charge of or sell all his effects, and enter in the official log (attested by the mate and another of the crew) a statement of the money and effects so left; if sold, a statement of articles sold, and the amount they each fetched, and the amount of wages due to the deceased seaman, with deductions, if any (1854, s. 194). The wages of seamen lost with the ship are to be dealt with by the Board, as with the wages of other deceased seamen (1862, s. 21). Within forty-eight hours of a ship's arrival in a port of destination in the United Kingdom, the master is to deliver the money, goods, and balance of wages in his hands for a deceased seaman to the superintendent, with a full account, in a prescribed form, showing and proving the deductions (if any); or if he touches at a foreign port for forty-eight hours, to report the case

to the British consular officer (if any), and deliver money, effects, and wages, if requested, and receive a receipt therefor. On compliance with the above regulations in the United Kingdom, the captain shall receive a certificate from the superintendent to enable him to clear inwards if a foreign-going ship. There are heavy penalties imposed on masters for not taking care of, remitting, and accounting as above provided. Officers of Customs and consuls are to take charge of seamen's effects left abroad, and remit same, and their wages (if any), to the Board of Trade. Wages and effects of seamen dying in the United Kingdom are to be handed by the master to the superintendent at the port of discharge. If less than £50, the property of a deceased seaman may be paid over to the persons entitled without any probate or administration. The Board of Trade may refuse to pay moneys over under any alleged will of a seaman, unless it is very formally executed, and in favour of some blood or marriage relation, and on such refusal the wages and effects of the deceased seaman shall be dealt with as though no will had been made. The Board of Trade is vested with special powers to pay all just claims to creditors of a deceased seaman, but to disallow fraudulent and improper claims. The unclaimed wages and effects of deceased seamen are, after six years, paid into the Exchequer, and carried to the Consolidated Fund. There are heavy punishments for forgery and false representations in order to obtain wages or effects of deceased seamen (1854, ss. 195 to 204).

Leaving Seamen Abroad.

On the discharge of seamen abroad, upon sale of the ship, the master must get their consent, before the consul (if any), or before British merchants, to continue the voyage with the ship; or, if the seamen be discharged abroad, then the master must either bring them home or provide for their being brought home at the owner's expense. Any captain who wrongfully leaves any seaman on shore or at sea before the completion of the voyage, or returns to the United Kingdom, is guilty of a misdemeanour. If any master discharges or leaves a seaman in any British possession abroad other than where shipped, without having obtained certificate endorsed on the agreement by the superintendent or other local officer, or, if none, the chief Custom official; or if such master discharges or leaves a seaman out of the British possessions without getting the sanction of the British consular officer or two respectable merchants, he is guilty of

a misdemeanour. The proof of having obtained such certificate lies on the master, or he must show that he was unable to obtain it. If any seaman is left behind upon a certificate of unfitness or inability to proceed on the voyage, his wages must be paid either in cash or by bill on the owner, such payment to be approved by the proper shipping, customs or consular officer, or two respectable merchants at the place, who shall endorse their approval on the agreement (1854 ss. 205 to 209). It is not necessary to show in an action on a bill upon owners, as last mentioned, that the captain had authority to draw (1862, s. 19). Wages paid, as last aforesaid, out of British possessions, shall be to the consular officer, who shall endorse and hand an approved copy of account to the master, and shall retain the other for the payment of the seaman, after deducting all subsistence moneys and other expenses; and the master shall deliver up such endorsed agreement to the superintendent on arrival in the United Kingdom. Distressed British seamen abroad are to be relieved and sent home by any British governor, consular or other officer, or two resident British merchants at the public expense; and masters are, under penalty, required to bring distressed seamen home when directed so to do, in proportion of one to every fifty tons burthen. The master renders an account on returning to the United Kingdom, and obtains payment at a fixed rate (1854, ss. 110 to 112). Seamen guilty of desertion or misconduct are not entitled to be sent home or relieved (1862, s. 22). When any seaman is improperly discharged or left abroad by a British master, or, if in a foreign ship, becomes distressed, and is relieved, as above provided, such expenses are a charge on the ship; and the Board of Trade may sue either master or owners thereof for any wages, &c., due to such seaman (1854, s. 118).

Volunteering into the Navy.

Any seaman is allowed to leave his ship in order to forthwith enter the Navy; and as soon as he enters, the master—under penalty—is to deliver up his clothes, and pay the amount of his wages earned, either in money or bill on the owner. When a seaman, on entering the Navy, has not earned the whole amount advanced by his owners to him, such amount unearned is to be repaid the owner out of the seaman's naval wages when earned; but if in engaging a substitute for such seaman the master is put to extra expense, he may obtain repayment from the Admiralty on that account.

Provisions, Health, and Accommodation.

Any three or more of the crew of a British ship may complain to any naval officer, consular officer, superintendent, or chief officer of Customs, that the provisions or water supplied are bad or insufficient. Such officer is to examine the provisions, &c., and if found bad or insufficient, he shall give the master notice thereof in writing, and require him, under penalty of £20, to remedy the matter, and shall enter a report of the inspection in the official log, and give notice thereof to the Board of Trade. But if the officer reports that there is no ground for complaint, then each complainant is liable to forfeit one week's wages to the owner. If the allowance of provisions be contrary to agreement, reduced in quantity, or be of bad quality, the seaman is to receive compensation for time of breach of agreement. But if the breach be unavoidable, and equivalent substitutes are provided, then no compensation is given, or the amount thereof is modified (1854, ss. 121 to 123). Proper weights and measures are to be kept on board vessels (1854, s. 225).

The Board of Trade shall issue scales of medicines, &c., suitable for different ships and voyages, and books of instruction for dispensing them. Owners of ships trading away from the United Kingdom must have the prescribed medicines, &c., and books of instruction. Any lime or lemon juice used must be such as is approved by the Board of Trade, be supplied from a bonded warehouse, and bear the Customs' label. The masters or owners of foreign-going ships (with the exception of certain voyages in Europe and North Atlantic) are to have a sufficient and prescribed quantity of lime or lemon juice, or other approved anti-scorbutics, on board, which is to be served out to the crew after they have been out ten days (except they have been in a harbour and obtained fresh provisions), one ounce per day mixed with water to each man. If any seaman neglects or refuses to take it, an entry is to be made thereof in the official log. The penalty for any breach of the above provisions varies from £5 to £20, unless it occurs without fault (1867, s. 4). Board of Trade and Local Marine Boards may appoint inspectors of medicines, &c. to see that ships are properly provided (1854, s. 226). The penalty for selling medicines of bad quality is £20. The governor of any British possession may make provisions for the supply of lime or lemon juice within his jurisdiction (1867, ss. 5, 6).

If a master, seaman, or apprentice sustains any injury in the service of the ship, or is removed to prevent infection, or otherwise, for the convenience of the ship, and subsequently returns to duty, or if he is ill on board ship, the owner is to pay for his medical attendance and subsistence until he is cured or returned to the United Kingdom; and in case of death, for his burial. In other cases of illness or death, the reasonable proved expenses may be deducted from wages (1854, s. 228). Whenever a seaman who is ill has not been provided with proper food, water, and anti-scorbutics; the master or owner is liable to pay all the expenses of such illness (not exceeding the amount of three months' wages), unless he can show that the illness arose from other causes than his neglect. If any seaman is ill owing to his own wilful act or default, he shall not be entitled to wages whilst incapacitated by such illness (1867, ss. 7, 8). Any expenses in respect of the illness, injury, or hurt of any seaman, payable by an owner, which are paid by any consular or other officer authorised so to do, shall be recovered from the master, and failing that, are a charge on the ship, and recoverable either by ordinary process of law, or summarily, like wages. Every foreign-going ship having 100 persons or upwards on board, shall, under penalty of £100 per voyage, carry a medical practitioner (1854, ss. 229, 230).

Every place in a ship occupied by seamen shall have at least 72 cubic feet and 12 superficial feet of floor for each man, and must be properly constructed, lighted, ventilated, and protected from weather and sea, and be shut off from effluvium and bilge water. Such space is not to be deducted from the registered tonnage, unless there are one or more proper privies for the crew; and the number of men the place is intended to accommodate is cut in a beam, and cut or painted over the hatchway. This space is to be kept free from all stores or goods not being the personal effects of the seaman for the voyage. On any complaint the Board of Trade will cause survey of such space, and if found insufficient the inspecting officer shall so report, and thereupon the registered tonnage shall be altered. If the space be not kept clear of goods and stores, then the master shall, during the continuance of the breach, pay to each seaman lodged in such space one shilling per day after complaint made. There is also a penalty of £20 for non-compliance with these provisions (1867, s. 9). The governor of any British possession may appoint surveyors of crew spaces as above (C. S. A., 1868, s. 3).

Local Marine Boards, where there are such, and elsewhere the

Board of Trade may appoint medical inspectors of seamen, who shall, at the request of shipowners or masters, examine any seaman intending to ship, and report on their condition to the superintendent, who shall hand a copy of such report to the owner or master on payment of certain fees. In British possessions the governor shall appoint medical inspectors (1867, s. 10)

Power of making Complaint

If any seaman wishes to make a complaint before a magistrate or consular officer against the master or any of the crew, the master shall, under penalty, permit such seaman on arrival at some port, or so soon thereafter as the service of the ship shall allow it, to go ashore and make his complaint.

Protection of Seamen from Imposition.

Wages due to a seaman are not liable to attachment, and wages cannot be sold or assigned so as to be legally binding. No debt of more than 5s. incurred by a seaman after agreeing to serve shall be recoverable until the service is ended. Lodging-house keepers charging seamen for a longer time than just, are liable to a penalty of £10. Any person detaining a seaman's effects, except for a debt justly due, is liable to a penalty of £10. No person is, under penalty of £20, to go on board without the captain's sanction until she has finally arrived in dock or at her place of discharge. Any person then being on board of a ship within 24 hours of her arrival in any port in the United Kingdom who solicits any seaman to become a lodger at any lodging-house, or takes out of such ship any seaman's effects without his direction and the permission of the master incurs a penalty of £5 (1854, ss. 233 to 238).

Discipline

Misconduct on the part of a master or seaman endangering ship, or life, or limb, is made a misdemeanour. Courts with Admiralty jurisdiction in her Majesty's dominions have power at the instance of owner, or his agent, consignee, certificated mate, or one-third of the crew, to remove the master and appoint another in his stead. The Board of Trade or Local Marine Board, assisted by a stipendiary magistrate or legal assessor, have power to hold investigations of

alleged incompetency and misconduct of masters and mates, but so as to give the person charged full opportunity of making a defence. The costs to be in the discretion of the Court. The Court is to make a report of the case to the Board of Trade (1854, ss. 239 to 241). This power is now extended to cover investigations into the conduct of certificated engineers (1862, s. 11).

Formerly the Board of Trade had power to cancel or suspend the certificate whether of competency or service of any master or mate in the following cases:—

1. If he is reported on an inquiry as last above-mentioned to be guilty of any gross act of misconduct, drunkenness, or tyranny.
2. If on any investigation under the 8th part of the Merchant Shipping Act, 1854, or on a naval inquiry, it is reported that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default.
3. If superseded by order of any Admiralty Court or Naval Court.
4. If shewn to have been convicted of any offence.
5. On report of his misconduct or neglect by any Colonial Court of Inquiry confirmed by the governor of the Possession.

Every master or mate whose certificate is cancelled or suspended, shall deliver same under penalty of £50 to the Board of Trade (1854, s. 242).

By the Merchant Shipping Act of 1862 the power of cancelling or suspending certificates given as last mentioned is removed from the Board of Trade, and vested in Local Marine Board, magistrates, Naval Court, Admiralty Court, or other court or tribunal by which the case is investigated, except where the certificated officer has been "convicted of any offence," when the Board still deals with his certificate. The power is given to courts of inquiry to cancel or suspend the certificates of engineers in the same manner as those of masters or mates. The decision as to cancelling or suspending shall be stated in open court, and a full report of the proceedings, together with the evidence and the certificate, shall be forwarded to the Board of Trade. The Board of Trade may afterwards, however, if they think just, re-issue or return any cancelled or suspended certificates, or shorten the time of suspension, or grant a new certificate of the same or a lower grade. No certificate can be suspended or cancelled unless a statement of the case upon which the investigation is ordered has been served upon the owner of such

certificate before the investigation, and on investigations before justices or a stipendiary, one of the assessors hereafter-mentioned must express his concurrence in the report. Every certificated officer whose certificate is to be suspended must deliver same on demand to the court investigating the case, or the Board of Trade (1862, ss. 23, 24).

The following offences of seamen are punishable summarily: For unlawfully deserting his ship, by twelve weeks' imprisonment, forfeiture of all effects on board, or wages earned, and paying for a substitute. For not joining his ship, or being absent without leave within twenty-four hours of sailing, or at any time during the voyage, by ten weeks' imprisonment, and forfeiture of two days' pay, and also six days' pay for every twenty-four hours of absence, or expenses of a substitute. For quitting the ship at port of delivery before she is secured, by a fine not exceeding one month's pay. For wilful disobedience to a lawful command, by four weeks' imprisonment, and forfeiture of two days' pay. For continued disobedience and neglect of duty, by twelve weeks' imprisonment, and by forfeiture of six days' pay (at most) for every twenty-four hours of continued disobedience or neglect, or the expenses of hiring a substitute. For assaulting any officer, or for combining to disobey, or neglecting duty, or hindering the voyage, by twelve weeks' imprisonment. For wilfully damaging the ship, or wilfully damaging or embezzling any of her stores or cargo, by twelve weeks' imprisonment, and forfeiture out of his wages equal to the loss sustained. For conviction of any act of smuggling, whereby the owner suffers loss, by forfeiture of a sum equal to such loss, and his wages may be taken in satisfaction of such amount. If any of the above-named offences are committed, an entry of the fact must be made in the official log, and also that such entry had been read over to the offender, or a copy given to him, and any reply he may make is to be entered. Seamen whom masters of ships are compelled to convey, and also persons going in ships without leave, are liable to the same penalties as the crew (1854, ss. 243 to 245).

Masters or owners may arrest deserters without a warrant, and convey them before some proper tribunal within twenty-four hours. Any person improperly arresting a seaman is liable to a penalty of £20. Magistrates may send deserters back on board if requested so to do instead of imprisoning them, and order payment of costs and expenses out of their wages. Any seaman imprisoned for desertion or breach of discipline may, on request, be sent back on board

before the termination of his sentence: Entries and certificates of desertion abroad are to be endorsed on agreement by proper authority, and copies of the entries and certificate are to be sent to the Registrar-General of Seamen. The costs of getting a seaman punished for any of the offences before-mentioned may be deducted from his wages up to £3. When the wages forfeited are not by the month, &c., but by the voyage, &c., the amount forfeited shall be in proportion to the amount earned. Any question as to forfeiture or deduction of wages may be determined in any proceeding respecting such wages, although there may have been no criminal proceedings taken (1854, ss. 246 to 254). If any seaman, on being engaged, wilfully makes a false statement as to his last ship, or gives a wrong name, he incurs a penalty of £5 (1854, s. 55).

Whenever any seaman commits an act of misconduct for which it is intended under his agreement to inflict a fine, an entry thereof shall be made in the official log, and such entry must be read over to the offender, or a copy thereof furnished to him, and a note of having done so must be entered in the official log, and also of any reply he makes. On the master proving the offence before a superintendent in the United Kingdom, the amount of such fine shall be deducted and paid over to such superintendent. Or if the seaman be discharged abroad, such offence shall be proved before the consul, chief officer of customs, or other person before whom such seaman is to be discharged, and then the amount of such fine shall be deducted from the seaman's wages, and an entry thereof made in the official log, and shall, on arrival of the ship in the United Kingdom, be handed over to the superintendent. The penalty for not handing over every such fine as aforesaid is six times its amount (1854, s. 256).

The penalty for enticing any seaman to desert or neglect to join his ship, or absent himself from duty, is £10; and the penalty for wilfully harbouring a deserter, having reason to believe him to be such, is £20. Every person who secretes himself, and goes to sea in any ship without leave, incurs a penalty of £20, or imprisonment for four weeks (1854, ss. 257, 258).

If during any voyage the master is superseded, or quits the ship, and is succeeded by another master, he must, under a penalty of £100, hand over to his successor all documents relating to the navigation of the ship or the crew, who shall in taking command enter a list of such documents in the official log (1854, s. 259).

Survey of Ships alleged by Seamen to be Unseaworthy.

When a seaman is proceeded against for desertion, neglecting, or refusing to join, or proceed to sea, or for being absent from or quitting his ship, without leave; and one-fourth of the seamen (or five seamen if the number of seamen exceeds twenty) allege that such ship by reason of unseaworthiness, overloading, improper loading, defective equipment, or any other cause, is unfit to proceed to sea; or that the accommodation is insufficient; the Court having cognizance of the case shall ascertain if such allegation is true. If satisfied that it is groundless, the Court shall proceed to adjudicate on the case; if not satisfied, shall order the ship to be surveyed. Before any seaman can take advantage of this provision he must have complained to the master. The Court may appoint the Board of Trade surveyor, or any other impartial surveyor, to survey the ship, and to report in writing, and also to answer any question put by the Court. Such report is to be communicated to the parties, and unless proved to be erroneous, the Court shall act upon it. Surveyors appointed as above have all the powers of Board of Trade inspectors, and are paid by a prescribed scale of fees. If it is proved that the ship is fit to go to sea, and that the accommodation is sufficient, the costs of the survey shall be paid by the persons on whose demand or allegation it was obtained, and may be deducted out of their wages. If the allegation is proved to be true, the costs of survey are to be paid by the master or owner. Any Naval Court may direct the survey of a ship which is the subject of an investigation before them (1871, ss. 7, 8). Any seamen detained owing to survey of an unseaworthy ship are entitled to compensation (1873, s. 9).

Naval Courts.

Any commanding officer of a British man-of-war on a foreign station, or a British consular officer may summon a Naval Court to investigate complaints by officers or crews of British ships, or matters involving the interests of the owners of such ships or their cargoes, or the circumstances, where any such ship has been wrecked, or abandoned, or lost at or near the place where such naval officer is, or when the crew of any such ship wrecked, lost, or abandoned arrives at that place. A Naval Court shall consist of not more than five and not less than three members, if possible, one being a naval

officer, from lieutenant upwards, one a consular officer, and one a merchant captain, and the rest shall be naval officers or merchant captains and British merchants. The Court has power to hear and investigate in the before-mentioned cases, to compel the attendance of witnesses and the production of documents; but any person accused must have a full opportunity of making a defence. The Court may, if unanimous that it is necessary so to do, supersede the master, and appoint another in his stead, with the consent of the consignee of the ship if at that place; it may discharge a seaman, and order his wages to be paid to the owners of the ship as compensation, or into Her Majesty's Exchequer, or deal generally with the questions of wages, fines, or forfeitures, and can order payment of the costs of the imprisonment of any seaman out of his present or future wages; it may send officers home for trial, and the cost of any such inquiry are in the discretion of the Court. The proceedings of the Court shall, if possible, be entered in the official log and signed by the president of the Court. The Court shall report to the Board of Trade, with a statement of the proceedings and the evidence taken, an account of the wages of any seaman discharged by it, and a report of any loss, wreck, or abandonment, with an opinion as to the cause thereof, and as to the conduct of the master or crew. Such report is to be signed by the president of the Court. The penalty for preventing any complaint or obstructing any such investigation is £50, or imprisonment, with or without hard labour, for twelve weeks (1854, ss. 260 to 266). And a Naval Court has, also, the same summary powers as are vested (as before-mentioned) in two justices in dealing with offences of masters or crew; but if they order imprisonment, such order must be approved by the senior naval or consular officer at the place where the Court is held, who shall approve the place of imprisonment, and have copies of all sentences forwarded to him (1855, s. 18).

Crimes Committed on the High Seas and Abroad.

Offences against property or person committed out of Her Majesty's dominions by any British master, seaman, or apprentice, either ashore or afloat, are considered as being within the Admiralty jurisdiction of England; and any consular officer may send the offender and witnesses to the United Kingdom or to some British possession having courts competent to deal with the matter; and

the master of any British vessel may be required to convey such offender and witnesses, and deliver the offender into custody on arrival, he being repaid for so doing.

If any death occurs during a voyage, the superintendent shall inquire into the circumstances when the crew is discharged; and, if necessary, report to the Board of Trade, or take immediate steps to have the matter judicially inquired into. Depositions are to be received as evidence when witnesses cannot be produced (1854, ss. 267 to 270).

Registration of Seamen.

There is an office in London called the "General Register and Record Office of Seamen," under the control of the Board of Trade. There is a Registrar-General at the head of this office, with a staff of officials and clerks, and a register is to be kept, so far as possible, of all persons serving in British ships. Masters of foreign-going and home-trade ships shall, under penalty, on discharging their crews, make out and sign a list in an authorised form containing particulars of the crew, voyage, wages, and other matters, and deliver same—in the case of foreign-going ships paying off in the United Kingdom—to the superintendent before whom the crew is discharged, either forty-eight hours after arrival in port of discharge or upon discharging crew, whichever first happens; and, in return, shall receive a clearing certificate. And in the case of home-trade ships, the master shall make out such list half-yearly within twenty-one days after the 30th June and 31st December, and deliver and transmit the same to some superintendent, who gives a certificate of its receipt, which must be produced before any clearance or transire of the ship can be obtained (1854, ss. 271 to 275). In case of transfer or loss of a ship, the master shall, under penalty of £10, forward such a list to the superintendent of the port of registry within one month, if in England, and within six months if abroad.

Superintendents, officers of customs, shall, after the use of documents is at an end, transmit same to the Registrar-General for record and preservation, who shall permit inspection of, and produce originals in Court, and furnish attested copies. Collectors of customs shall, half-yearly, transmit to the Registrar-General a list of all ships at their ports, and all changes since the preceding return (1854, ss. 276 to 278). The masters of all ships—except

passenger ships—arriving at foreign ports where there is a British consular officer, or at any port in British possessions abroad, and remaining forty-eight hours, must, within that time, deliver to the consul or customs official the agreement with the crew and the apprenticeship indentures and assignments, who shall keep same during the ship's stay at the port, and before leaving shall return same to the master, with a certificate of delivery and return endorsed; but in case there appears to be any irregularity in such documents, the official shall endorse a memorandum thereof on the agreement and forward a report thereof to the Registrar-General. Masters failing to comply with these provisions are subject to a penalty of £20, and the onus of proof shall be on the master (1854, s. 279).

Official Logs.

Official logs in a form sanctioned by the Board of Trade are to be kept by all ships (except coasting vessels), and such official logs may be kept either in conjunction with, or separate from, the ordinary logs. Entries in the official log shall be promptly made, and if not entered the day of the occurrence, then the date of the occurrence and entry shall both be inserted, and no entry shall be made of matters occurring before arrival at port of discharge more than twenty-four hours after such arrival.

The following matters have to be entered in the official log:—

Every legal conviction of a seaman and the punishment inflicted.

Any offence for which it is intended to prosecute, or fine the offender, with a memorandum that the entries made have been read over to the offender.

Every offence punished and the punishment.

Statement of conduct, character, or qualifications of the crew, or that the master declines to give an opinion on such particulars.

Every case of illness, or injury, to any of the crew, and the treatment adopted.

Every marriage taking place on board, with the names and ages of the parties.

Name of every seaman, or apprentice, quitting the ship, with place, time manner, and cause thereof.

Amount of wages due to any seaman who enters the Navy during the voyage.

Amount of wages due to any seaman, or apprentice, dying during the voyage, and the gross amount of all deductions to be made therefrom.

Particulars of effects of any deceased seaman which are sold.

Every collision with another ship, and the circumstances under which the same occurred (1854, s. 282).

The entries are to be signed by the master and the mate, or some other of the crew, and entries of illness, injury, or death, shall be signed by the doctor (if any). Entries of wages due to a deceased seaman, or respecting the sale of his effects, shall be signed by the master and mate and another of the crew. Entries of wages due to a seaman entering the Navy shall be signed by the master, and by such seaman, or the naval officer receiving such seaman. Severe penalties are provided to ensure the proper keeping of official logs, and to prevent fraudulent entries being made in them (1854, ss. 283, 284).

All entries in official logs are to be received in evidence. The masters of foreign-going ships shall, within forty-eight hours of arrival at port of destination in the United Kingdom, or discharge of crew, whichever first happens, deliver to the superintendent before whom the crew is discharged, the official log of the voyage. Masters of home-trade ships are to deliver their official logs half yearly, within twenty-one days after 30th June and 31st December in each year. And in case of transfer of ship, or her loss, or abandonment during her voyage, the master, or owner, is under penalty of £10, within six months, to send home the official log to the superintendent of the port to which the ship belongs (1854, ss. 285 to 287).

Registration of Births and Deaths at Sea.

By the Births and Deaths Registration Act, 1874, 37 and 38 Victoria, cap. 88, sec. 37, the registration of births and deaths occurring at sea is provided for by making it compulsory for masters of British ships to enter the full particulars of all births and deaths occurring during any voyage in a given form in the official logs, and to transmit a return of such occurrences to the Registrar-General of Seamen.

India and the Colonies.

The foregoing provisions respecting masters and seamen, if formally adopted by the East Indian or Colonial Governments,

shall apply to all their own ships, and may be enforced throughout the British Empire. Where there is any conflict between the before-mentioned provisions and any other laws, the above provisions shall prevail; but where there is no provision in these Acts, then the law of the place where such ship is registered shall prevail (1854, ss. 288 to 290).

Royal Naval Reserve.

By the Reserve Volunteer Force of Seamen Act, 22nd and 23rd Victoria, cap. 40, provision is made for enrolling from amongst the seafaring classes of the community a force not exceeding 30,000 men, and for training them, or, if necessary, calling them up for active service. Provisions are made for their maintenance, payment, pension, discharge, and punishment. By the officers of Royal Naval Reserve Act, 1863, 26 and 27 Victoria, cap. 69, ss. 1 to 5, and the Merchant Shipping Act, 1862, s. 17, provisions are made for accepting the service of officers and engineers of the merchant service and other suitable persons, as officers of the Reserve to the Royal Navy.

Unseaworthiness.

Every person sending, or attempting to send, or being party to sending, or attempting to send, a ship to sea in a state whereby the life of any person is likely to be endangered, is guilty of a misdemeanour unless he proves that he used all reasonable efforts to make the ship seaworthy, or that sending her out was, under the circumstances of the case, justifiable, and the person charged may give evidence on his own behalf. Any master knowingly taking such ship to sea is guilty of a misdemeanour, unless his act was justifiable and reasonable, and he also can give evidence on his own behalf. Prosecution under these powers must be with the consent of the Board of Trade, or the governor of the British possession where it is instituted. The misdemeanour is not punishable on summary conviction. There is an implied obligation in law on the part of the owner of a ship with the master and crew, that the owner or his agents will see that the ship is in every way seaworthy for the voyage she is to take, and will keep her in that condition during the voyage unless the sending of the ship to sea was, under special circumstances, reasonable and justifiable (1876, ss. 4 and 5).

When a British ship in a port of the United Kingdom is "unsafe,"

that is, unfit to proceed to sea without serious danger to human life by reason of defective condition of hull, equipments, or machinery, or by reason of overloading or improper loading :

1. The Board of Trade may provisionally detain her.
2. The Board shall serve on the master a statement of the grounds of detention, and appoint a competent person or persons to survey and report.
3. On receipt of such report the ship may either be released, or, if the ship be unsafe, she may be absolutely detained, or until the conditions as to repairs or loading imposed by the Board are complied with.

4. Before final detention a copy of the report shall be served on the master, and the owner or master may, within seven days from such service, appeal to the Court of Survey.

5. On a provisional detention, the owner or master may require that the Board of Trade surveyor shall be accompanied by one of the persons on the list of assessors, and if the surveyor and assessor agree, the Board shall be bound by their decision; but if they differ, the Board may act as they deem right, without prejudice to the right of the owner or master to appeal to the Court of Survey.

6. The Board has power to refer the matter of a ship's detention to the Court of Survey.

7. If the Board be satisfied that the ship is not unsafe, it may order her release conditionally or unconditionally.

8. The Board has power to appoint officials to carry the said provisions into effect.

9. The officer having the exercise of these powers of detention, &c., is to be called a "detaining officer."

10. A detaining officer shall forthwith make a report to the Board of any ship detained by him under these provisions.

A Court of Survey, for a port or district, shall consist of a judge sitting with two assessors.

The judge may be a wreck commissioner, a stipendiary magistrate, judge of County Court, or other fit person named in a list approved by one of the principal Secretaries of State.

The assessors shall be persons of nautical, engineering, or other special skill and experience. One assessor shall be appointed by the Board of Trade, and the other shall be summoned by the Registrar of the Court of Survey, out of a list of persons periodically appointed by the Local Marine Board, or other authority.

The County Court Registrar, or other fit person appointed by a Secretary of State, shall be registrar of the Court of Survey, and shall immediately upon receiving notice of appeal summon a Court.

Every case shall be heard in open Court. The judge and assessors may survey the ship. The judge may appoint any competent person to survey the ship and report thereon. The judge shall have power to order release or final detention, but one of the assessors must concur in the latter judgment, or the ship will be released. The owner or master, or any person appointed by them, or anyone appointed by the Board of Trade, may attend any survey or inspection by or under order of the court. A report of the decision of the court and statement of reasons is to be forwarded to the Board of Trade after each inquiry, and to be signed by the judge, and also by each of the assessors, or he must state his reasons for declining to do so.

The Lord Chancellor may make rules (and alter, revoke, add to, or vary the same) for carrying out these provisions, and to regulate the procedure of the Courts of Survey, such rules to have the same force as the Act of Parliament (a copy of the rules now in force will be found set out in the chapter on "Unseaworthiness," see ante).

The Board of Trade is liable for the costs and damages of an improper detention, and an action for such may be brought against the Secretary of the Board in his official capacity, but the owner of an unsafe ship is made liable for all Board of Trade costs of survey and detention, such costs to be recoverable as salvage (1876, ss. 6 to 10). On a complaint made to the Board of Trade or a detaining officer that any ship is unsafe, the complainant may be required to give security for costs and damages, unless the complaint is made by one-fourth, not less than three of the seamen of any ship, and is not apparently frivolous or vexatious, and made a sufficient time before sailing to ascertain whether the ship ought to be detained or not. If on any detention or complaint the Board has to pay costs or damages, then the complainants are liable to repay the Board (1876, sec. 11). A detaining officer shall have the same power as a Board of Trade inspector. Both provisional and final orders for detention, or orders varying the same, shall be at once served on the master. A detained ship shall not be released on account of her British registry being subsequently closed. Any person as above authorised to inspect or survey has full power to inspect every part of the ship, her machinery, equipments, and cargo, and may require the removal of any cargo, ballast, or tackle. Any person impeding any judge, assessors, surveyor, or officer in the matter of any survey,

shall be punished in the same way as though the person impeded or disobeyed were a Board of Trade inspector (1876, s. 12).

When a foreign ship in a port in the United Kingdom is overloaded or improperly loaded, she may be detained and surveyed as above provided on due notice to the consular officer of the State to which the vessel belongs, who has power to act on behalf of such ship (1876, s. 13).

When difficult and important scientific questions are involved the matter may be referred to one or more selected scientific referees, who have the powers of a judge of the Court of Survey (1876, s. 15).

The Board of Trade may take and record the draught of water of any sea-going ship on leaving port, and such draught, under severe penalty, is to be noted in the official log book (1871, s. 5). The record last-mentioned shall also show the extent of her clear side in feet and inches (1873, s. 4).

Boats and Buoys for sea-going Ships.

All ships proceeding to sea must have a prescribed number of boats according to their tonnage, and in case of passenger ships one such boat must be a lifeboat, and there must be two life buoys, and such boats and buoys must be kept always fit and ready for immediate use. If the owner or master is in default in not providing boats and buoys, or, if lost, in replacing them if possible, or in failing to keep them at all times fit and ready for use, the former incurs a penalty of £100 and the latter of £50. Officers of customs are not to clear ships not complying with the above provisions (1854, ss. 292 to 294). The Board of Trade may from time to time vary the requirements as to boats (1873, s. 15).

Grain Cargoes.

No cargo of which more than one-third consists of any kind of grain (including corn, rice, paddy pulse seeds, or nut kernels) shall be carried on board a British ship unless it be contained in bags, sacks, or barrels, or secured from shifting by boards, bulkheads, or otherwise. Any owner, master, or loading agent who allows cargo to be shipped contrary to before-named provisions, incurs a penalty of £300, recoverable on summary conviction (1876, s. 22).

Deck Cargoes.

Any British or foreign ship other than a "home trade ship" which carries deck cargo shall pay dues in respect thereof, and the tonnage of the space occupied by the deck cargo shall be ascertained by Board of Trade or Customs' officials, and entered by them in the official log, and also in the clearing memorandum. If a British or foreign ship arrives between the last day of October and 16th April in any port in the United Kingdom from any port out of the United Kingdom, carrying a deck cargo of wood goods, the master or owner (if privy to the offence) shall be liable to a penalty of £5 for every 100 cubic feet of such deck cargo; such penalty to the extent of £100 may be recovered on summary conviction. The master or owner is not liable if it be shown that the deck load was carried on account of some leak or other damage to the ship, or the ship arrived later than the last day of October owing to unforeseen circumstances, or arrived before 16th April owing to an exceptionally favourable voyage. And these provisions do not affect any ship not bound to a United Kingdom port which puts into one for repairs or stress of weather and not for delivering her cargo (1876, ss. 23, 24).

Chain Cables and Anchors.

The Chain Cables and Anchors Acts, 1864, 1871, 1874, being 27 and 28 Vict., cap. 27, 34, and 35 Vict., cap. 101, and 37 and 38 Vict., cap. 51, respectively provide for the testing of cable chains and anchors by licensed public bodies under Board of Trade inspection, and for the marking of them with a proof mark, and giving certificates of test. Persons offending against these Acts are liable to heavy penalties, and in some cases are guilty of a misdemeanour. The operation of these Acts does not relieve makers from civil responsibility. The sale or purchase of unproved chain cables or anchors exceeding 168 lbs. in weight is a misdemeanour, and every contract for sale of chain cable shall be deemed to imply a warranty that such cable has been properly tested. These Acts do not affect Admiralty contracts. The anchors and cables of any alleged unsatisfactory ship may be tested unless they have previously been tested in the prescribed manner.

Lights, Fog-signals, Meeting and Passing, Collision.

These matters are now regulated by the rules in Table C (see Chapter Collision, ante) or such modifications thereof, or such new regulations as Her Majesty, on the joint recommendation of the Admiralty and Board of Trade, may approve, and such regulations and any alterations or additions thereto shall be printed by the Board of Trade and copies furnished to any owner or master applying for the same, and all owners and masters shall be bound to obey the regulations in force for the time being, in every respect, and each infringement is a misdemeanour. In case of damage to person or property through neglect of any of these regulations, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck, unless the non-observance of such regulation was, under the circumstances, necessary (1862, ss. 25 to 28). In the trial of any collision case where it is proved that any of these regulations have been infringed, the ship so infringing shall be deemed at fault, unless the non-observance of the regulations was under the circumstances necessary (1873, s. 17). Whenever foreign ships are within British jurisdiction the regulations in force shall apply to them, and in British courts, in matters happening in British jurisdiction, foreign ships shall, as to these regulations, be treated as British ships. If such regulations are adopted by any foreign country, Her Majesty may, by Order in Council, declare that they shall apply to ships of that country, whether within British jurisdiction or not (1862, ss. 57 and 58).

The Board of Trade may inspect ships, and their lights, and signals for the purpose of enforcing these regulations (1862, s. 30).

In case of collision between two vessels, it is the duty of the master, or person in charge of each vessel, so far as he can without danger to his own vessel, crew, or passengers, to stay by the other vessel to render assistance to her, or her crew, or passengers, as may be necessary to save them from danger, and also to give the master or person in charge of such other vessel the name of his own vessel, her port of registry, and also the ports or places from which and to which she is bound. If he fail to do so without reasonable cause, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default, and if such master, or person in charge, be a certificated officer, an inquiry may be held into his conduct, and his certificate may be

cancelled or suspended, and any such neglect or default is punishable as a misdemeanour (1873, s. 16).

Signals of Distress.

The following signals are to be deemed signals of distress, and any master of a vessel who uses or allows such signals to be used without cause shall be liable to pay compensation for any labour, risk, or loss sustained in consequence, and such compensation shall be recoverable like salvage.

In the daytime, whether used separately or together:

1. A gun fired at intervals of about one minute.
2. The International code signal of distress, indicated by N. C.
3. The distant signal, consisting of a square flag, having either above or below it a ball, or anything resembling a ball.

At night, whether used separately or together—

1. A gun-fired at intervals of about one minute.
2. Flames on the ship (as from a burning tar-barrel, oil-barrel, &c.)
3. Rockets or shells of any colour or description, fired one at a time, at short intervals.

Her Majesty in Council may repeal, alter, or add to these rules and regulations as to signals of distress, &c. (1873, ss. 18 to 20).

Private Signals.

Any shipowner desirous of using signals for a private code may register such code with the Board of Trade, if they do not conflict with the signals authorised for distress, pilots, &c. (1873, s. 21).

Build and Equipment of Steamships.

Steamships are to have a safety-valve on each boiler, out of the control of the engineer when steam is up. Seagoing steamships carrying passengers shall have their compasses adjusted from time to time, to the satisfaction and according to the regulations of the Board of Trade. Every sea-going steamship (unless a steam tug only) shall have efficient hose to extinguish fire, capable of being connected with the ship's engines. Every home-trade steamship carrying passengers shall have sufficient and proper shelter for deck passengers. For any breach of these provisions the owner, if in

default, is liable to £100 penalty, and the master to £50. Any person placing undue weights on any such safety-valve shall, in addition to other liabilities, incur a penalty of £100 (1854, ss. 301 and 302).

Survey of Passenger Steamers

Passenger steamers shall be surveyed once in every year (1872, s. 8), by surveyors appointed by the Board of Trade (1854, s. 105), who receive a fixed rate of remuneration (1873, s. 30), and have full powers of inspection (1854, s. 306).

The surveyors shall give a formal detailed declaration that the ship is in all necessary respects fit for its work (1854, s. 309); and with respect to the engineers, that their certificates are in due order (1862, s. 12). Such declarations of surveyors are under penalty to be forwarded to the Board of Trade within fourteen days of receipt; and the Board of Trade, if satisfied, shall then issue a certificate in duplicate of the ship's fitness, on payment of a fee (1854, ss. 310 to 313). If the owners of such a ship feel aggrieved with the surveyor's decision, or with the determination of the Board of Trade thereon, they may appeal to the before-mentioned Court of Survey, whose decision is binding on the surveyors or officials concerned. The owner may appoint some one to accompany the official surveyors on any survey, and if they agree there shall be no appeal from their decision (1876, s. 14). Such certificate remains in force until it expires by effluxion of time, or is revoked or cancelled, when the Board of Trade may, under penalty, require it to be delivered up. Such steamship shall not be cleared to proceed on any voyage without having the certificate of fitness for such a voyage, but may be detained on attempting to do so. The owner and master of such ship must under heavy penalty see that a certificate is placed in some conspicuous part of the ship during the voyage (1854, ss. 310 to 318). Any steamship may carry passengers not exceeding twelve in number, without any of the above formalities (1876, s. 16). Where any colony adopts provisions similar to the above Her Majesty may by Order in Council approve and enforce such provisions (1876, s. 17). Where a steamer has been surveyed for passengers under the above provisions it is not necessary to have her re-surveyed under the Passengers' Act, 1855, and *vice versâ* (1876, s. 18). When the Board of Trade is satisfied with the foreign survey of a foreign ship,

properly authenticated, it may grant a certificate without any further survey (1876, s. 19).

The Board of Trade has power to exempt any passenger ship from the provisions as to good space and accommodation where they are provided in a different but superior manner in the ship.

Every sea-going passenger-ship and emigrant-ship shall under heavy penalties be provided with the means of making signals of distress at night, including making flames on the ship inextinguishable in water, and capable of being attached to life buoys (1876, s. 21). There is a heavy penalty for carrying any more passengers than those named in the certificate. The forging or fraudulent alteration of any declaration, certificate, &c., is made a misdemeanour. Surveyors, and owners, or masters, shall, under penalty, at the request of the Board of Trade, give returns, particulars, and information respectively (1854, ss. 319 to 321.)

Misconduct by Passengers on Steamers.

The following offences are punishable with a penalty of forty shillings:—Any drunk or disorderly person who, after having any fare paid by him returned or tendered, persists in attempting to enter a steamer, or refuses to leave at any convenient place in the United Kingdom. Any person who, after warning, molests any passenger. Any person who, after warning and the return or tender of any fare paid, persists in entering a full steamer, or declines to leave such steamer when once on board before she commences her voyage. Any person who wrongfully travels, or attempts so to do, without previous payment of fare, or tries to travel further than entitled for the fare paid, or who knowingly refuses or neglects to leave the steamer at his destination, or who, on demand, either refuses to pay fare or produce ticket or receipt (1862, s. 35).

Any person who wilfully injures or obstructs the machinery or tackle of such steamer, or obstructs or molests any of the crew in the navigation or management of the steamer, shall be liable to a penalty of £20. And the master or officer of a passenger steamer may, with the assistance of any other persons detain any person so offending against the above provisions whose name and address is unknown, and without any warrant convey such person before a justice of the peace to try the case (1862, ss. 36, 37). Any person who, having committed any offence

as above, refuses on demand to give his name and address to the master or other proper person in the owner's employ, or a false name and address, is liable to a penalty of £20 (1854, s. 324).

Accidents.

If a steamer cause or sustain any material damage to hull or machinery, or occasion loss of life or serious injury to any person, the owner or master must, within 24 hours after or as soon as possible, send a report of the accident and probable cause thereof to the Board of Trade (1854, s. 326). The owners of any British ship must give the Board of Trade notice within a reasonable time of any apprehended loss of their ship and the probable occasion thereof, under penalty of £50 (1873, s. 22). And in every case of collision the master shall, where practicable, immediately after the occurrence, cause a statement of the circumstances to be entered in the official log, and sign the same, together with the mate or one of the crew (1854, s. 328)

Carrying Dangerous Goods.

If any person, not being the master or owner of the vessel, sends or carries, or attempts to send or carry in any vessel, British or foreign, any aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum, or any other goods of a dangerous character without distinctly marking their nature outside the package, and giving written notice to the master or owner of the nature of such goods, and the name and address of the carrier or sender thereof, shall incur a penalty of £100, unless he show that he was merely an agent, and did not know or suspect that such goods were of a dangerous nature, when the penalty shall not exceed £10; and the penalty for falsely describing such goods, or the carrier or sender thereof, is £100. And the master or owner of any British or foreign ship may refuse to take on board any parcel which he suspects to contain dangerous goods, and may require it to be opened, or if shipped without notice, such dangerous goods may, without any liability, be thrown overboard; and where such dangerous goods are improperly sent, or falsely described as to nature, or the sender or carrier thereof, they may be forfeited to any Court having Admiralty jurisdiction, and disposed of as the Court direct, and that without any notice to the owner of the goods and without

any evidence that such owner has in any way offended against the above provisions. These provisions are in addition to, and not in substitution for, any other like enactments, but no person can be sued or prosecuted twice for the same matter (1873, ss. 23 to 28).

Emigrant and Passenger Ships.

By the Passenger Acts, 1855 (18 & 19 Vict. cap. 119, 1863, 26 & 27 Vict. cap. 81, 1870, 33 & 34 Vict. cap. 95), M. S. A. 1872, s. 6,) detailed provision is made for the arrangement of emigrant or passenger ships (that is, such as carry passengers in any voyage from the United Kingdom to any place out of Europe, and not being in the Mediterranean sea, or from any such places to the United Kingdom), the stowage of cargo, the decent accommodation of the passengers and crew, the provision of proper boats, life-buoys, anchors, and fire-engines; provisions, water, lime juice, passengers' steward, cooking apparatus, medical men, and medicines. The respective rights of the passengers and shipowners are defined and secured, and provisions are made for the due inspection, regulation, and control of such ships. As these Acts are very voluminous, and although cognate to the object of this work, do not strictly come within the "Merchant Shipping Acts," the reader is referred to the Acts themselves for further and more detailed information.

Pilotage Authorities.

The pilotage authorities existing before the Merchant Shipping Act, 1854, retain all their powers not inconsistent with the provisions hereinafter set forth. They have power to make and extend exemptions from compulsory pilotage; to determine the qualifications of pilots; to make regulations as to pilot boats, and the government of pilots; to issue licenses and certificates to pilots; to alter and reduce rates of pilotage; to arrange the limits of pilotage districts; to establish funds for superannuation of pilots; and to repeal and alter bye-laws, and make new bye-laws in lieu thereof (1854, ss. 331 to 333). There is also power for the Board of Trade by a provisional order to transfer and exchange pilotage jurisdiction and to make all arrangements consequent thereupon; to constitute new authorities; to exempt any district from compulsory pilotage; to enable existing authorities to grant licenses and fix rates; to increase the rates; to facilitate the recovery of rates; and to facilitate

grants of licenses. All bye-laws must be printed for publication and for confirmation by the Privy Council and Parliament. There is an appeal to the Board of Trade by parties against pilotage authorities, and by the authorities against third parties (1862, ss. 39 and 40).

Every pilotage authority is to make an annual return to the Board of Trade, or, in default, their jurisdiction may be transferred to the Trinity House. The Board of Trade lays such returns before Parliament (1854, ss. 338 and 339).

Licensing of Masters and Mates.

A master or mate after having passed an examination shall receive a pilotage certificate enabling him to pilot particular ships, but these certificates have to be annually renewed. If the authority refuse to examine, then the Board of Trade will hold examinations and grant certificates. There are certain fees payable for certificates, and on the renewals thereof. Any authority has power to withdraw a certificate on proof of the holder being incompetent or guilty of misconduct (1854, ss. 340 to 344).

Pilot Boats.

Pilot boats are to be licensed by the pilotage authority of the district. Such boats under penalty shall be painted black or as the Board of Trade directs. On the stern, the name of the owner and her port, and on each bow the licensed number, all in large white letters. She shall, when afloat, carry conspicuously a large flag, the upper horizontal half white, and the lower half red. When a qualified pilot is in any other boat he shall under penalty show such a white and red flag. Any boat improperly showing a pilot flag incurs a penalty of £50 (1854, ss. 345 to 348).

Signals for Pilots.

The signals for pilots shall be as under, and any master using or permitting such to be used for any other purpose than summoning a pilot incurs a penalty of £20.

In the day time the Jack or other national colour usually worn by merchant ships with a white border hoisted at the fore, or the International Code pilotage signal P. T.; or both signals together. At night a blue light every fifteen minutes, or a bright white light

flashed or shown at frequent intervals just above the bulwarks for about a minute at a time; or both these signals together (1873, s. 19).

Pilot Licenses.

Qualified pilots are to receive licenses and copies of regulations of the district then in force, which they are to produce when required to persons employing them, and deliver the licenses up on request to the pilotage authority; and at death such licenses are to be at once under penalty forwarded to the authority (1854, ss. 349 to 352). Any pilotage authority may by Order in Council grant special sea licenses (1872, s. 11).

Compulsory Pilotage.

Any master who within a compulsory pilotage district (without leave), and after an offer of a qualified pilot's services, navigates himself or employs an unqualified person, incurs a penalty of double pilotage dues. Home-trade passenger ships *must* carry qualified pilots unless the master or mate is qualified to act as pilot, and the Board of Trade grant certificates of qualification if satisfied of the master or mate's experience or competency to act as pilot for such district (1854, ss. 353 to 355).

Rights and Remuneration of Pilots.

Qualified pilots leading a ship, but not able to board her, are entitled to pilotage dues.

No pilot, without his consent, shall be taken out of his district, and, if so taken (or unavoidably), he shall be allowed 10s. 6d. a day until he can return, and reasonable travelling expenses home. No other than the authorised rates are, under penalty, to be paid, demanded, or received. The master is, under penalty, bound to tell the pilot the true draught of the ship. A qualified pilot may supersede an unqualified pilot, and the fees are to be divided, and any dispute thereon is to be settled by the pilotage authority. An unqualified pilot may take charge of a ship if no qualified pilot offer himself, if a ship is in distress, or to change the moorings of a ship in port; but if he continue to act after a qualified pilot has offered to act, or uses an unauthorised license, he incurs a penalty of £50. The owner or master of a ship, or such consignees or agents as act for the ship, are

liable for the pilotage dues, and may be summarily proceeded against seven days after written notice to pay has been served, and any sum paid by such consignee or agent may with all reasonable expenses be retained by him out of owners' moneys in his hands (1854, ss. 356 to 364).

Offences of Pilots.

If any qualified pilot keep a public-house, or sells wine, spirituous liquors, tobacco, or tea, or offends against the revenue laws, or is guilty of corrupt practices, or lends his license, or acts whilst suspended or intoxicated, or improperly increases the expense of pilotage, or refuses or delays to pilot any ship, or unnecessarily cuts or slips any cable, or refuses to conduct any ship to port without reasonable excuse, or quits the ship without leave before the completion of service, he is liable to suspension or dismissal, and a penalty of £100. Any pilot in charge, by whose wilful breach or neglect of duty the ship or life or limb is endangered is guilty of a misdemeanour. And any person who by falsehood obtains charge of any vessel shall, beyond the liability for damages, be subject to a penalty of £100 (1854, ss. 365 to 367).

Trinity House.

A general power is given to the Trinity House to alter or vary, from time to time, the provisions applicable to it. The Trinity House has power to appoint sub-commissioners to examine pilots and grant licenses in the districts under its charge, which are "The London District," which extends from London and Rochester bridges to Orfordness to the north, and Dungeness to the south; "The English Channel District," comprising the seas between Dungeness and the Isle of Wight; "The Trinity House Outport Districts," comprising any pilotage district for which there is no other authority or provision. Notice is to be published of the names and abodes of all Trinity House pilots, and fixed up at the Trinity House and Custom Houses of London, and all the ports in the Trinity districts. Penal bonds for £100 are executed by pilots for the due performance of their duties, and their liability is limited to this sum. The licenses are renewed on the 31st January of every year. The Trinity House has power to revoke or suspend any of their licenses (1854, ss. 369 to 375).

Compulsory Pilotage (Trinity House).

Subject to any alterations by the Trinity House, and except as hereinafter mentioned, it is compulsory under a heavy penalty to employ a qualified pilot in the London and Outport districts of the Trinity House, if such pilot offer his service. The Trinity House is to make provision for a constant supply of qualified pilots at Dungeness, and ships coming past that place from the west to the Thames or Medway, unless exempted must take the first qualified pilot who offers. If the master of such a ship fail to signal for a pilot, or to give every facility for his boarding he incurs a heavy penalty (1854, ss. 376 to 378.)

The following ships, when not carrying passengers, shall be exempted from compulsory pilotage in the London and Outport districts—

1. Ships employed in the coasting trade.
2. Ships not more than 60 tons burden.
3. Ships trading to Boulogne, or any place in Europe north of Boulogne.
4. Ships from the Isle of Man, or Channel Isles, wholly laden with stone, being the produce of those islands.
5. Ships navigating within the limits of any port to which they belong.
6. Ships passing through the limits of any of the above pilotage districts on their voyages between two places, both situate out of such limit, and not being bound to any place within such limit, nor anchoring therein (1854, s. 379.).

Ships passing through any pilotage district in the United Kingdom on their voyages between two places, both situate out of such districts, are exempt from employing or paying for pilots, unless they load or discharge any cargo in such district, or at any place lying on some river or its tributaries which passes through such district (1862, s. 41).

Rates of Pilotage (Trinity House).

Certain prescribed rates of pilotage are fixed by the Trinity House for their districts, but these rates may be altered by them. Foreign ships trading to and from London must pay to the collector of Customs pilotage dues inwards for the distance

piloted, and outwards for the full distance, and a certificate of payment is given for clearance. The collector of Customs pays over such dues to the Trinity House, which settles with the pilots and persons entitled to remuneration. In case of dispute as to the draught of water of any ship trading to London, she is to be measured before discharge by a person appointed by the Trinity House, and the dispute settled, and the party against whom he decides shall pay a fee of £1 1s. if the ship be below, and 10s. 6d. if the ship be above the London Docks at Wapping (1854, ss. 380 to 384).

Pilot Fund (Trinity House)

This fund is provided for by charging a poundage of 6d. in the £ on all Trinity House pilots' earnings, and a yearly certificate-fee of £3 3s. for each pilot, and the fund is chargeable with the expenses of all pilotage duties, and then is used for a superannuation fund, and a pilots' Widows and Orphans Fund (1854, ss. 385, 386).

Hull and Newcastle Trinity Houses.

These Corporations have power to appoint sub-commissioners for examining pilots in their districts (1854, s. 387).

Owners' and Masters' Liability.

No owner or master of any ship shall be answerable to any person whatever, for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship within any district where the employment of such pilot is compulsory by law (1854, s. 388).

Management of Lighthouses.

Subject to the rights or customs of any "local authorities," the superintendence and management of lighthouses, buoys, and beacons are vested as follows—

1. In England and Wales and the Channel Isles, and the adjacent seas and islands, and in Gibraltar, and Heligoland, in the Trinity House.
2. In Scotland and the adjacent seas and islands, and in the Isle of Man, in the Commissioners of Northern Lighthouses.

3. In Ireland and the adjacent seas and islands in the Commissioners of Irish Lights.

The Trinity House may, by their engineers and servants, at all times enter and inspect Scotch and Irish lighthouses. The Board of Trade, on complaint made, may order the inspection of *any* lighthouses, buoys, or beacons, and require full information as to such lights, &c., or their management (1854, ss. 389 to 394). The above named general lighthouse authorities have full power to control local authorities, and must inspect local lights, buoys, and beacons, and obtain full information about them, and make a report thereon to the local authorities and the Board of Trade (1862, s. 43). In case of default by local authorities, their lighthouses, buoys, and beacons, and all powers and privileges in relation thereto may, by Order in Council, be transferred to the General Authority in whose district they are (1854, s. 395).

Light Dues.

Certain prescribed dues may be levied by the general authorities in respect of the lights, buoys, and beacons within their jurisdiction on all ships save Her Majesty's, and they may alter and regulate such dues (1854, s. 396). Any alteration in local light dues must be sanctioned by Order in Council, and the Privy Council may alter, increase, or reduce any light dues whatsoever (1862, s. 46). The general authorities may, with the consent of the Privy Council, exempt ships, or classes of ships, from payment of light dues, and impose conditions and alter the times, places, and modes of payment, and substitute any other dues or annual payments therefor. Tables of all light dues are to be posted in every Custom House (1854, ss. 397 to 399). A receipt for light dues is given to every person paying the same, and such receipt must be produced on clearance of the ship (1854, ss. 400). The owner or master of any ship, or such consignees or agents thereof as have made themselves liable for the other charges payable by the ship in the port of arrival or discharge, are liable also for the light duties; and they may be recovered as penalties, and such consignee or agent may retain the amount of such light dues paid by him out of any of the ship's or owner's moneys in his hands (1862, ss. 44 and 45). On the nonpayment of light dues for any ship, the authorised collector has additional power to distrain on the goods and tackle of such ship; and, after three days, to sell such distress and satisfy the amount due, and pay the balance, if any, to the owner or master (1854, s. 401).

New Lighthouses.

The general authorities have power to erect new lighthouses and place lights, buoys, or beacons, alter and vary old ones, and do all necessary acts to effectuate these purposes, but under the supervision of the Trinity House and the Board of Trade; and the Trinity House, with the sanction of the Board of Trade, can compel the execution of such works. The dues for such new lights, &c., shall be fixed, altered, and applied by Order in Council. No dues are to be levied in the Channel Islands without the consent of the Island States, and no power in respect thereof be exercised except by Order in Council. The Lands Clauses Consolidation Act (1854) shall apply in the case of all lighthouses to be constructed and land to be purchased for the above-purposes. Local lighthouses, &c., with all rights and privileges, may, with the sanction of the Board of Trade, be surrendered to the general lighthouse authority in whose district they are situate (1854, ss. 404 to 413).

Damage to Lighthouses.

Any person who injures, removes, or alters any lighthouse, lightship, buoy, or beacon, rides by, makes fast to, or runs foul of any lightship or buoy, incurs a penalty of £50 (1854, s. 414).

Prevention of False Lights.

If any light is burned which may be mistaken for a lighthouse light, the general authority of the district may give notice to have it extinguished or screened; and if the person concerned does not abate it, he shall be deemed guilty of a common nuisance and proceeded against therefor, and incur a penalty of £100, and, in addition, the general authority may themselves abate such nuisance (1854, ss. 415, 416).

Colonial Lighthouses.

There are powers similar to the above for establishing lighthouses in the colonies, levying dues by Order in Council, with the consent of the Colonial legislature, and collecting these dues, which are to be paid over to the Paymaster-General, and to be applied, after deducting the expenses of collection, entirely to the maintenance of

the lights for which they are levied. For constructing or repairing such lighthouses the dues may be mortgaged. Accounts of each such lighthouses are to be kept and laid before Parliament (1855, ss. 2 to 8).

Mercantile Marine Fund.

The various moneys, fees, and dues, payable under the Merchant Shipping Acts, are carried to the Mercantile Marine Fund, and out of this fund all the salaries of officers and servants, and the expenses of carrying out the provisions of the Merchant Shipping Acts are to be paid (1854, ss. 417 to 431, 1872 s. 14).

Inquiries into Shipping Casualties.

Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of the United Kingdom, or whenever any ship causes loss or material damage to any other ship, or when any such casualty, involving loss of life, happens on or near such coasts, or whenever such loss or abandonment, damage, or casualty happens elsewhere, but competent witnesses thereof are found in the United Kingdom, the inspecting officer of coast-guard, or principal officer of customs, shall make due and full inquiry into the circumstances, and if it appear to him that a formal investigation is necessary, or if the Board of Trade so direct, he shall apply to two Justices of the Peace, or a stipendiary magistrate, to hear the case, which they shall do with all their usual powers of summoning parties and witnesses. And at the conclusion of the case they, or he, shall send a report of the case to the Board of Trade, containing a full statement of the case, and of their, or his, opinion thereon, accompanied, if necessary, by extracts from the evidence (1854, ss. 432, 433). And in the following cases, whenever any ship on or near the coasts of the United Kingdom, or any British ship elsewhere has been *stranded* or *damaged*, and any witness is found in any place in the United Kingdom, or whenever a British ship has been lost, or is supposed to have been lost, and any evidence can be obtained in the United Kingdom as to the circumstances under which she proceeded to sea, or was last heard of, the Board of Trade may cause an inquiry to be made into the circumstances, and all provisions shall apply as though it were made as above-mentioned in other cases (1876, s. 32).

The Lord Chancellor has power to appoint three wreck commissioners for the United Kingdom, whose duty it is to hold any formal investigation into any loss, abandonment, damage, or casualty (now called a shipping casualty) in the same way, and with the same powers as two justices of the peace or a stipendiary magistrate as hereinbefore mentioned. The Wreck Commissioners, Justices, or other authority, holding a formal investigation, shall be assisted by an assessor or assessors of nautical engineering, or other special skill or knowledge, to be appointed by the Court out of a list of persons appointed by a Secretary of State; and where the Court is of opinion that the investigation is likely to involve the cancellation or suspension of the certificate of a master or mate, it shall, where practicable, appoint a person, having experience in the merchant service, as one of the assessors. Each assessor shall sign the report of the Court to the Board of Trade, or state his reasons for declining to do so (1876, ss. 29, 30).

Where there is a Marine Board, and a stipendiary magistrate is a member thereof, all such investigations shall be, if possible, held before him, and he shall be paid such remuneration as the Home Secretary, with the consent of the Board of Trade, shall direct out of the Mercantile Marine Fund.

The costs of investigations are in the discretion of the Court, and such expenses in default of any order fall on the Board of Trade, which pays the assessors their fees. In investigations in Scotland the Board of Trade may remit the same to the Lord Advocate, to be dealt with by him as he thinks fit (1854, ss. 435 to 437).

A formal investigation into a shipping casualty may be held at any place appointed by the Board of Trade (1876, s. 33).

The Lord Chancellor may, with the consent of the Treasury, fix all fees to be paid in respect of investigations, and make all necessary rules for regulating the procedure of such inquiries, which shall have the same force as though a part of the Act. And every such inquiry shall be so conducted as to give any person charged an opportunity of making a defence (1876, s. 29). (Such rules as above mentioned have been duly made, see chapter on "Inquiries into Shipping Casualties," *ante*.)

Any certificated officer charged, or likely to be charged, must, on request, under heavy penalty, deliver up his certificate, which will be held until the close of the inquiry, and it shall then either be returned, or if cancelled, or suspended, forwarded to the Board of Trade (1854, s. 438).

Receivers of Wreck.

The Board of Trade has a general superintendence over matters relating to wreck, and may appoint any officers of Customs, Coast-guard, or Excise, as receivers of wreck. Whenever any ship is in distress, or stranded on the coast of the United Kingdom, the receiver of the district shall assume command of all persons present for the preservation of the ship, her equipment, crew, and cargo, and any person disobeying his orders incurs a penalty of £50. The receiver shall not, however, interfere without permission between the master and his crew in the management of his ship. He has power to demand the assistance of bystanders, with or without their boats, &c., and waggons, carts, or horses, and any person disobeying is liable to a penalty of £100. All articles washed ashore, or lost, or taken from any ship, must, under heavy penalty, be delivered to the receiver, who may suppress plunder and disorder by force (1854, ss. 439 to 444). During the absence of any receiver, a principal officer of Customs, Coastguard, or Inland Revenue, or any sheriff, or justice of the peace, or naval, or military officer, may act in his stead. When a ship is in distress all persons assisting may, with or without horses, carts, and carriages, pass over any adjoining lands, and deposit goods saved thereon. Any damage occasioned thereby shall be recoverable as salvage; and any occupier, or owner, refusing permission, or impeding the work, is liable to a penalty of £100. The receiver, or, in his absence, any justice of the peace shall examine, upon oath, into the cause of the casualty, &c., and send one copy of the examination to the Board of Trade, and the other to Lloyd's, in London (1854, ss. 445 to 448). A Wreck Commissioner may, at the request of the Board of Trade, hold the same examination as a receiver of wreck (1876, s. 31). The original, or a certified copy of such examination is *prima facie* evidence of all matters contained therein (1854, s. 449).

Any person finding any wreck, &c., in the United Kingdom shall give notice forthwith to the receiver in such district, and deliver up possession; or in default shall forfeit all right to salvage, and is liable to pay twice the value of the wreck, and a penalty of £100. Receivers have full power to search for, and *seize*, any concealed wreck. Within forty-eight hours of taking possession of any wreck, the receiver shall post a description in the nearest Custom House, and if it exceed £20 in value, send a copy of such description to

Lloyd's to be posted up. Where any wreck is of a perishable nature, or of less value than £5, or not worth warehousing, then the receiver may immediately sell it. In cases where any lord of the manor or other person is entitled to unclaimed wreck, the receiver shall give full notice to him thereof. The receiver of wreck charge certain fixed fees, which are carried to the Mercantile Marine Fund (1854, ss. 45C to 457).

Salvage in the United Kingdom.

When a ship is stranded, or in distress, on the shore of any sea or tidal river in the United Kingdom, any person assisting such ship, or in saving lives, or cargo, or tackle from the ship, is entitled to salvage and reasonable expenses (1854, s. 458). The provisions of the Act as to salvage of life are now extended to all British ships at any place whatsoever, and to all foreign ships in British waters (Admiralty Court Act, 1861, s. 9). These provisions as to life salvage may, by Order in Council, and consent of any foreign country, be applied to its ships on the high seas (1862, s. 59). Salvage of life has priority over all other salvage claims; but if the ship is destroyed, or of insufficient value, the Board of Trade shall order payment thereof out of the Mercantile Marine Fund (1854, s. 459). In any disputes as to salvage (except in the Cinque ports), where the sum claimed is not more than £200, or the value of the property saved does not exceed £1000, the matter may be referred to two justices of the peace, or any stipendiary magistrate, or to a county court judge in England, a sheriff, or his substitute, in Scotland, a recorder of any borough, or a chairman of quarter sessions in Ireland, all resident, or exercising jurisdiction at or near the place where the wreck, &c., is found, or where any ship, or boat, in respect of which salvage service has been performed, is lying at or near the first port in the United Kingdom to which such ship, or boat, &c., comes. A principal Secretary of State, or the Lord-Lieutenant of Ireland may appoint a rota of justices for boroughs or counties to hear salvage cases, but in default of such rota the salvor may, in a written notice sent to the justices' clerk appoint one justice, and the owner of the property may, by the like notice, appoint the other justice. The receiver of the district may, on the request of either party, have the property in question valued, and such valuation, certified by the receiver, shall be received in evidence.

The justices may call in an assessor conversant with maritime affairs or appoint such a person as umpire, and the decision of the justices and umpire respectively must be within forty-eight hours of the reference to them or him, but either of them may extend the time in writing signed by them or him. The assessor or umpire may, under direction of the Board of Trade, be paid a sum not exceeding £5, and the general costs of the reference are in the hands of the justices or other judge as above hearing the case, who may call for all necessary documents, examine witnesses, and administer oaths. There is an appeal from the decision of the justices, or other judge, in England and Ireland to the respective High Courts of Admiralty, and in Scotland, to the Court of Session, provided that the sum in dispute is over £50, and the appellant gives the justices notice of his intention to appeal within ten days, and actually commences appeal proceedings within twenty days of the award; and the justices or other judge shall send up to the Court of Appeal a certified copy of the proceedings and the gross valuation of the property saved (1854, ss. 460 to 465; 1862, ss. 49, 50).

If the sum claimed is over £200, or the property saved is above £1000 in value, any dispute (unless the parties consent to a reference as above) shall be decided by the High Courts of Admiralty in England and Ireland respectively, and the High Court of Session in Scotland; but if the claimant does not get more than £200 he is not allowed any costs (1854, s. 460).

All disputes whatsoever as to salvage may be heard on the application either of the salvor or the owner of the property (1854, s. 460).

If the aggregate amount of salvage awarded is not over £200, and there is a dispute as to its apportionment, the owner may pay it over to the receiver, who shall distribute it in such shares and manner as he thinks fit (1854, ss. 466, 467).

When any salvage is due, the receiver may detain the ship, boat, cargo, or wreck until the salvage is paid, or a process for detention thereof, in some competent court has been issued; but on satisfactory security being given, he may release such ship, boat, cargo, or wreck. When any such ship, &c., is detained as aforesaid, and the parties liable to pay the salvage are aware of such detention, then:

1. If the amount is not disputed and payment is not made within twenty days after it is due.
2. Where the amount, though disputed, cannot be appealed against, and the amount is not paid within twenty days.
3. Where the amount is disputed, but no appeal

proceedings have been taken within twenty days, the receiver may forthwith sell such ship, &c., and pay the salvage and all expenses, and then pay the balance (if any) to the owners (1854, ss. 468 to 470).

Unclaimed Wreck in the United Kingdom.

If any wreck is unclaimed for one year, the receiver is, after payment of all expenses and claims due thereon, to hand same over to the lord of the manor, admiral, or other person who can prove a title thereto, and any dispute thereon shall be settled in the same manner as in salvage disputes. But such delivery of wreck by the receiver does not prejudice the question of title. If, on decision of the dispute, any party is dissatisfied, he may, within three months, take proceedings in some superior court having jurisdiction.

If no person establish a right to such wreck for a year, the receiver shall sell same, and, after deducting expenses, &c., pay the proceeds into the Exchequer, subject, however, to the Private Crown rights, and the rights of the Duchies of Lancaster and Cornwall (1854, ss. 471 to 475; and 1862, ss. 52 and 53).

Jurisdiction of Admiralty Courts.

The Admiralty Courts of England and Ireland have, subject as aforesaid, jurisdiction over salvage cases arising on the high seas on their coasts (1854, s. 476); and the county courts having admiralty jurisdiction have cognizance of salvage claims where the property is not worth more than £1000, or the claim is not more than £300. And if any claim which might be made as above in the county court is brought without good reason in any superior court, or if the amount recovered does not exceed £300, he shall not receive, but shall be liable to pay costs (31 and 32 Vic. cap. 71, s. 3).

Offences in respect of Wreck.

If any ship, &c., has been plundered or damaged by a tumultuous mob, the hundred or district where it occurs shall be liable for the damage sustained. And every person who on a shipwreck plunders, impedes, or obstructs salvage, or secretes or conceals any wreck, shall, in addition to any other penalty or punishment, incur a penalty of £50; and any person attempting to board any ship in

distress without permission of the person in authority incurs the like penalty, and the master may repel any such intending boarder with force. Any person taking any wreck from the United Kingdom and selling the same in a foreign port is guilty of felony, and liable to four years' penal servitude (1854, ss. 477 to 479).

Dealers in Marine Stores, and Marking Anchors.

Every person dealing in, buying, and selling anchors, cables, sails, old junk, old iron, or marine stores of any description, shall, subject to heavy penalties, have his name, with the words "Dealer in Marine Stores," painted above any warehouse or other place of deposit belonging to him, in distinct letters not less than six inches in length; shall enter in a book an account of all marine stores purchased or received by him, with the true date of purchase, and the name, description, and address of the seller; shall not purchase marine stores from any person apparently under 16 years of age, and shall not destroy any cable over five fathoms in length without obtaining permission to do so from a local justice of the peace, or from the receiver of the district, and having published such permission in some local paper for a week before cutting up or unlaying such cable; and any person suspecting that such cable is his may obtain a warrant from a justice of the peace for the inspection of such cable and the marine store dealer's books, &c. (1854, ss. 480 to 482).

Anchor manufacturers are to mark all anchors made by them with their initials, and the number of the anchor on the crown, and also on the shank near the stock, or for each default incur a penalty of £5 (1854, s. 483).

Salvage by Her Majesty's Ships.

No salvage claim is to be allowed in respect of loss or risk to Her Majesty's ships or property incurred in doing salvage service. Claims for salvage services by naval officers are not to be determined without the consent of the Admiralty. When salvage services are rendered abroad by any of Her Majesty's ships, if it is right that any property should be detained, it is to be taken to some port where there is a consular officer or Vice-Admiralty Court, and the salvor shall forthwith deliver a statement verified on oath to the consular officer or Vice-Admiralty Judge, containing the particulars of the time and mode of salvage, the nature and duration of the services, the amount claimed for salvage, and his estimated value of

the property saved. And the master in charge of the ship or property is to make a statement of the state of the ship's ownership, particulars of the freighter, freight, and cargo; also his estimated value of the ship, cargo, property, and freight, and his estimate of the value of the salvage; also a list of property saved, an account and particulars of any sale of ship, cargo, or property; particulars of the crew at the time of the salvage services; any other relevant circumstances, and also of his willingness to execute a bond in a prescribed form for an amount to be fixed by the said consular officer or Vice-Admiralty Judge. After executing such bond, the right to detain the ship or property ceases. If the persons owning the ship or property are resident out of Her Majesty's dominions, additional security may be demanded. All the above documents and statements are to be forthwith sent to the Court of Admiralty of England, which has authority to adjudicate thereon, unless the parties agree on some other Court. The above-named bonds bind the owners of the said ship, freight, and cargo, and their respective heirs, executors, and administrators for salvage adjudged due against their respective properties. All such documents made or executed out of the United Kingdom are free from stamp duty (1854, ss. 485 to 496).

Salvage—General.

Where any salvage services are rendered, either by the commander or crew of a man-of-war or any other ship, and the salvor abandons his lien on the ship or other property saved, and the master or person in charge enters into a written agreement, attested by two witnesses, to abide the decision of the Court of Admiralty, and giving agreed security, such agreement shall be binding on the owners of the ship, cargo, and freight respectively to the amount of the security. Such agreement shall be adjudicated upon and enforced in the same way as the bond mentioned in the last paragraph, and the same statement as therein mentioned on the part of the salvors and owner or person in charge of any saved property are to be made.

When the aggregate amount of salvage for services in the United Kingdom is awarded at over £200, and when salvage for services elsewhere to any amount has been finally settled, and there is a dispute as to the apportionment thereof, any Court having Admiralty jurisdiction may cause the money to be apportioned under its direction.

In case foreign ships are wrecked near the United Kingdom or elsewhere, and are brought to the United Kingdom, the Consul-General of the State to which the vessel or property belongs, or any consular officer of such country, shall, in the absence of the owner, master, or agent, be the agent so far as relates to the custody and disposal of such articles. Foreign goods found derelict are subject to the same duties as on importation, and goods saved from ships wrecked are to be forwarded to the ports of their original destination. In Scotland, salvage proceedings may be held before a sheriff or his substitute (1854, ss. 497 to 501).

Liability of Shipowners.

(These provisions apply to the whole British Empire.)

No owner of a seagoing ship is liable at all for any loss or damage happening without his actual fault, or privity to any goods on board by reason of fire, or for any gold, silver, diamonds, watches, jewels, or precious stones by reason of robbery or embezzlement thereof, unless the owner or shipper has, at the time of shipping, declared in writing the true nature and value thereof (1854, s. 503).

The owners of any ship, either British or foreign, shall not be answerable in damages in respect of loss of life, or personal injury, either alone or together, with loss or damage to ships, boats, goods, merchandise, or other things to an aggregate amount exceeding £15 per ton of their ship's tonnage, nor in respect of loss or damage to ships, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not to an aggregate amount exceeding £8 per ton of the ship's tonnage. In case of sailing ships the registered tonnage is to be taken, and in steamships the gross tonnage, without deducting engine-room, is to be reckoned; and in computing the tonnage of foreign ships, they are to be measured according to British law. Insurances effected against any of the events above named, and occurring without actual fault or privity, are not invalid by the nature of the risk (1862, ss. 54, 55).

The owners are liable to the extent named above for each loss or damage arising on distinct or separate occasions (1854, s. 506).

The production of the master's duplicate list of passengers on board any ship shall, in the absence of proof to the contrary, be proof of any person mentioned therein being on board (1862, s. 56).

Mode of Procedure.

Where anybody is charged with liability for any loss of life or personal injury as abovementioned, the Board of Trade may, after giving the defendant three days' notice, require some sheriff to summon a jury to determine the number, name, and description of all persons killed or injured by reason of any wrongful act, neglect, or default. Either party may require the question to be tried by special jury. The sheriff shall preside, and the Board of Trade, by its agent, shall be plaintiff, and the owners of the ship alleged to be liable are defendants. The defendants shall receive from the Board ten days' notice of the time and place of the inquiry, and service on the master shall be deemed good service on the owners. The proceedings shall go on in the absence of the defendants after the service of the notice is proved. The procedure of the Lands Clauses Consolidation Acts shall apply, and, if either party require it, the sheriff shall appoint a barrister as assessor. The costs shall follow the event. The payment of any damages or costs awarded as above may, on application, be enforced as a rule of a superior court. The Board of Trade may arrange a valid and binding compromise (1854, ss. 507 to 509).

The damages in each case of death or injury are assessed at £30, shall be paid in priority to all other claims, and shall be paid to the Paymaster-General, and the Board of Trade shall apply the funds and distribute them, and return any surplus to the owners without being liable for any damage in and about such distribution, &c. If any person who has been injured, or the executor of any person who has been killed, is dissatisfied with the statutory damage, he must get the Board of Trade to return the money to the owners, and then bring an action against them for the full damages. But if in such action the claimant do not recover more than double the statutory allowance, he pays the costs of this action (1854, ss. 509 to 511).

No person can commence an action for such damage to life or limb until the Board of Trade has held such inquiry, or refused to do so, or has taken no steps to hold such inquiry for one month after notice to do so has been sent to the Board.

If several claims for loss of life or personal injury are made on the shipowner, he may commence proceedings in any of the superior courts to determine the amount of his liability, and the mode of

distribution, and all other actions are stayed meantime (1854, ss. 512 to 514). Common Law Procedure Act, 1860, 23 and 24 Vict. cap. 126, s. 35; Admiralty Court Act, 1862, 24 Vict. cap. 10; Court of Admiralty (Ireland) Act, 1867, 30 and 31 Vict. cap. 114, s. 36.

Money paid for compensation for injuries is considered as money paid for the ship's use in accounts between part owners.

If any master or seaman is a part owner of the ship, he is not relieved from any liability in his capacity of master or seaman (1854, ss. 115, 116).

Legal Procedure.

These provisions apply to the whole of Her Majesty's dominions unless otherwise stated. Offences under the Merchant Shipping Acts shall be punished, and penalties recovered, in all British possessions, except Scotland, as follows: An offence declared to be a misdemeanour is punishable by fine of £100, or imprisonment with or without hard labour for six months, and may be prosecuted in a summary manner before two justices, or a stipendiary magistrate, or in the customary manner for summary proceedings in the place where the matter is tried. If the fine is over £5, or the imprisonment is more than one month, there is an appeal to the quarter sessions. A stipendiary magistrate alone has power to deal with these cases (1854, ss. 517 to 519). The harbour master at Holyhead may be commissioned with the same powers as a stipendiary magistrate (1867, s. 12). Every offence is deemed to have been committed where it actually occurred, or where the offender may be. Magistrates of adjacent districts have jurisdiction over ships or boats lying off, or passing such coasts, and all persons respectively thereon (1854, ss. 520, 521). If any person has committed any offence on board any British ship, either on the high seas or in any foreign port or harbour, and is afterwards found within limits of any British court having jurisdiction in such matters, he may be tried by such court as though the offence were committed within the jurisdiction of such court (1862, s. 21). Any British subject who commits any offence on board any British ship or any foreign ship to which he does not belong may be tried by any British court which would have had cognizance of the offence if committed within the ordinary jurisdiction of the court (1867, s. 11). Summonses and other legal proceedings may be personally served on the person to be served, or left at his last place of abode, or they may be left with the person in

command or charge of the ship to which such person to be served belongs. If any master or owner improperly neglects to pay any wages or penalties, the same may be levied by distress on the ship and her tackle, &c. (1854, ss. 522, 523).

The Court may apply any penalty imposed by it towards the compensation of any person wronged by the act or default complained of, or for the costs and expenses of the proceedings; but if not so applied penalties are in the United Kingdom paid into the Treasury to the Consolidated Fund of the United Kingdom, and in the Colonies into the Colonial Treasury (1854, s. 524).

Limitation of Time.

All proceedings to obtain a summary conviction must be commenced within six months from the date of the offence, or if either party be absent from the United Kingdom, within two months after the return of both to the United Kingdom. A similar provision is made respecting summary jurisdiction in the British possessions. No order for payment of any money in a summary way in the United Kingdom can be made unless the proceedings be taken within six months from the date of the cause of complaint; or if either party be absent from the United Kingdom, then within six months of the return of both to the United Kingdom. There are similar provisions regarding summary proceedings for the recovery of money in the British dominions (1854, s. 525).

Any document required to be executed in the presence of, or to be attested by one or more witnesses may be proved by the evidence of any person able to testify to the fact without the necessity of calling the attesting witness or witnesses. When any property of a British subject has sustained damage from any foreign ship, and such ship is found in the United Kingdom, or within three miles from the coast thereof, the judge of any Court of Record, or the Scotch Court of Session, or the Sheriff, on satisfactory evidence, may arrest and detain such ship until the claim is paid or security given for damages, costs, and expenses. If the foreign ship seems to be going to leave the jurisdiction before the application for detention can be made as above, then any military or naval officer, or Customs officer, or Consular officer may detain such ship until the application has been made. The person who gives security, as above-mentioned, is deemed the defendant (1854, ss. 525 to 529).

The Board of Trade may take proceedings in the name of any of their officers (1873, s. 31).

Legal Procedure in Scotland.

Offences in Scotland may be prosecuted by indictment or criminal letters or criminal libel, and provision is made for the due trial and punishment of these offences (1854, ss. 530 to 543).

Agreements with Lascars.

Contracts may be made with Lascars, or natives of the East Indies, for voyages to the Australian colonies, and thence to any part of the British dominions, subject to certain prescribed conditions, and the express condition that they be in due course returned to their own country, a certificate is given by a person appointed by the colonial governor which binds the Lascars (1854, s. 544). Contracts may also be made for Lascars to ship to the United Kingdom, and thence to other parts of the British dominions and back to their own country; but such agreements are subject to Government control, and must be in a given form (1855, s. 23). Masters, owners, or consignees of ships in which any African, Asian, or Polynesian seaman is brought to the United Kingdom, and being improperly left there, becomes a pauper, or is convicted of any offence, are liable to a penalty of £30 (1854, Repeal Act, s. 16). It is the duty of the Indian Government to relieve and take home any Lascars left destitute in the United Kingdom. By 4th George IV., chapter 80, provisions are made for shipping Lascars for their government, discipline, punishment, payment, &c.

Sailors' Homes.

Municipal corporations, or associations, or trustees constituted for any purpose connected with shipping in any seaport may, with the consent of a secretary of State, grant any land vested in them for the site of a sailor's home (1854, s. 546).

Colonial Legislation.

Colonial Legislatures may alter the provisions relating to merchant shipping registered in the respective colonies upon approval of Her Majesty in Council; but all Colonial laws inconsistent with the British law are invalid (1854, s. 547, and Custom's Consolidation Act 1853, s. 190). Colonial legislatures have the power, with

consent of Order in Council, to regulate the coasting trade of such possession (M.S.A., Colonial, 1869, s. 4). Coasting trade of India is regulated by the Governor-General in Council, whose orders shall be published in the *London Gazette* and laid before Parliament, and which orders may be revoked (Customs Consolidation Act, 1853, s. 329).

Foreign Ships in the Coasting Trade.

Foreign ships in the coasting trade of the United Kingdom and adjacent islands are liable to the same laws and provisions as British coasting ships, and shall pay the same rates, tolls, and dues (Customs Consolidation Acts, 1853, ss. 329 to 331, and Customs Consolidation Supplemental Act, 1855, s. 13).

Commissioners of Customs.

Expenses incurred by the Commissioners of Customs in carrying out the provisions of these Acts shall be paid in the first place out of the Consolidated Customs, and, if proper, to be repaid out of the Mercantile Marine Fund (1854, s. 548).

Sale or Mortgage of Dues, &c

Dues, tolls, rates, &c., levied on any ships or goods carried therein shall not be in any way sold, mortgaged, or charged without the written authority of the Board of Trade first had and obtained (Merchant Shipping Law Amendment Act, 1853, s. 24).

Orders in Council.

Where any of the above provisions are made by Order in Council to apply to any foreign ships than such ships in British courts shall, as to those provisions, be treated as British ships. Orders in Council may be limited as to time, and qualified and also revoked and altered. They must be published in the *London Gazette* (1862, ss. 61 to 64).

Bills of Lading

All rights in and upon a bill of lading vest in the consignee or endorsee. but not so as to affect the right to stoppage in transitu or

claims for freight. A bill of lading in the hands of a consignee or endorsee for value is conclusive evidence of shipment against the master or other person signing the same, notwithstanding that the goods or part thereof were not shipped as stated, unless the holder had notice thereof at the time of receiving the bill of lading, or there has been some fraud on the part of the shipper or holder, or some one under whom he claims (Bills of Lading Act, 1855, ss. 1 to 3).

Delivery of Goods and Lien for Freight.

Where owners of goods imported from foreign parts into the United Kingdom fail to take delivery or have same landed as hereinafter mentioned, the shipowner may make entry of, land, or unship the said goods at the times and subject to the conditions following :

1. If a time is mentioned in the charter party, bill of lading, or agreement, then at any time after such time has passed.
2. If no such time is mentioned, then after seventy-two hours from the report of the ship exclusive of Sunday or holiday.
3. If landed as above, they should if possible be landed at the wharf or warehouse named in the charter party, bill of lading, or agreement (if any).
4. If none is named, then on some proper wharf or other place as customary for such goods.
5. The owner of the goods has the prior right to land and enter them at any time before the shipowner has done so.
6. If any goods are landed for assortment, and the owner makes entry thereof and declares himself willing to take delivery, such goods shall be delivered within twenty-four hours after assortment, and all the expenses shall be borne by the shipowner.
7. If before any goods are landed the owner thereof has made entry for landing at some wharf or warehouse other than where the ship is discharging, and has offered and been ready to take delivery thereof, but the same have not been so delivered, and no notice has been given to the owner where they can be delivered ; then the shipowner shall, before landing such goods, give the owner of the goods twenty-four hours' notice in writing of his readiness to deliver the goods, and in default he lands the same at his own risk and expense (1862, s. 67).

When any goods are landed as before mentioned, and a notice is given to the wharf or warehouse-owner that freight, &c., is due, then the lien thereon for freight, &c., is to continue. This lien may how-

ever, be discharged on proof to the wharf or warehouse owner, that the amount claimed has been duly paid, or by the deposit with him of the sum claimed. If no notice is given within fifteen days by the person paying such deposit to hold it, then the wharf or warehouse owner may pay the deposit to the shipowner. If such notice as aforesaid to hold the deposit or a part thereof is served, then the wharf or warehouse owner shall immediately apprise the shipowner thereof, and tender him any admitted amount, and then retain such deposit or the balance thereof for 80 days, and if in the meantime the shipowner has not commenced an action to recover the said sum, and served him with notice thereof, then he shall pay the same over to the owner of the goods (1862, ss. 68 to 72).

If the lien on discharged cargo is not relinquished, and no deposit paid, then after ninety days the warehouse keeper may sell the goods by auction, but before selling shall advertise such intended sale in two newspapers, of which one must be a local print; and, if the name and address is known, send notice by post to the owner of the goods (1862, 73 and 74).

Moneys arising from such a sale shall be applied in payment of the following matters:—1. Any customs or excise duties owing thereon. 2. Expenses of sale. 3. Wharf or warehouse charges for the goods. 4. Amount claimed by the shipowner. 5. Surplus to the owner of the goods. The wharf or warehouse keeper may charge his usual rent, and shall do all necessary acts for preserving the said goods, and shall receive all expenses of so doing (1862, ss 75, 76).

The wharf or warehouse owner is not liable to take any goods than such as he is usually liable to take, nor is he bound to see to the validity of any lien claimed. Nothing above mentioned shall take away or abridge any power given by any local Act to any harbour, trust, body corporate, or persons whereby they are enabled to expedite the discharge of ships or the landing or delivery of goods, nor take away or diminish any rights or remedies given to any shipowner or wharf or warehouse owner by any local Act (1862, ss. 77, 78).

INDEX.

	PAGE		PAGE
Abandonment		Admiralty Court	
Of wreck to underwriters	61-155	Will compel part owners in possession of a ship to give security in case of dispute	4
Of cargo by merchant does not deprive shipowner of his freight	99	Jurisdiction in wages questions	267
Abandoning Charter		May remove captain	272
When merchant has the right of	14, 15	Jurisdiction in salvage cases of.	304, 306
Merchant bound to declare off at once	17	Agent	
When he has not the right to abandon	17, 18	Ship's husband is agent of owners	5
When shipowner has the right to abandon	45, 46, 119, 120	Should state in charter the name of his principal	8
Absence		Named in charter, is personally liable, when he is in reality the principal	11
Of seamen without leave	274	Of charterer has no implied authority to change the voyage agreed for	40
Accidents		Insurance effected by, will be for the benefit of the principal	128
Causing delay in ship's arrival at port of loading, shipowner not responsible for	32	Form of power of attorney to appoint agent abroad	246
Duties of captain in case of	54-61	To procure seamen and apprentices	263
Noting protests in consequence of.	57	(See also <i>Captain, Charter, Shipbroker, Insurance Broker, &c.</i>)	
Causing damage to cargo, shipowner not liable for, if unavoidable	94	Agreement with Crew	
Board of Trade Inspectors to inquire into	252	To be in authorised form	263
Prevention of	73-81, 286	In case of foreign-going ships	263
To steamships to be reported to Board of Trade (see also <i>Damage, Collision, Captain, &c.</i>)	290	Provisions as to running agreements	263
Accommodation		In home-trade ships	264
For seamen	270	Effect of alteration of	265
For passengers	289, 291	To be posted up in the ship	265
For emigrants	291	To be produced to consul, &c.	279
For Lascars	311		

	PAGE		PAGE
Agreement (Average)		Number of arbitrators . . .	232
Form of	242	Evidence how to be taken and what admitted in . . .	233
Agreement (Navigation)		Agreement for, to be sent to the arbitrator	234
Form of	239	Procedure at the hearing . .	235
Anchors		Time allowed for making award	234
Allowed in full in general average	165	Provision for making the agreement a Rule of Court .	235
Manufacturers bound to mark their names on all anchors they make	285	Order to compel the attend- ance of witnesses may be obtained	235
Certificates of test given with	285	Solicitor should prepare award	236
Penalties, for selling un- proved	285	Award may be taken up by either party on paying fees, &c.	237
Allotment		Form of agreement to re- fer to	247
Of seamen's wages	265	Arbitrator	
Alterations in Charter		Who shall be appointed as .	233
After signing	22	Number of	233
None to be made except by consent	22	Procedure before	235
Must be in writing and stamped	23	Should employ solicitor to prepare his award	236
Letters altering charter . .	23	Should take legal advice on points of law	236
Altering Voyage		If arbitrators cannot agree, judge may appoint a third arbitrator or umpire .	236
Charterer's agent has no im- plied authority for	40	When award is made his power is at an end	236
Captain should see that per- son altering voyage has power to do so	120	Entitled to agreed fees or a reasonable sum	237
Discharges underwriters from liability	134	Articles (see Agreement, Sea- men, &c.)	
Apprentices		As near thereto	
Superintendents of Mercan- tile Marine shall facilitate binding of	261, 262	As she may safely get . . .	13, 91
Binding pauper boys as . .	262	Assessors (see Investigations into Shipping Casualties, Court of Survey, &c.)	
Indentures of, to be recorded	262		
No stamp duty on indentures of	262		
Desertion of	262		
Must attend before superin- tendent before each foreign going voyage	263	At	
Arbitration		A wharf means alongside the wharf	91
What cases suitable to . . .	231	Average (see Voyage, General Average, Particular Aver- age, &c.)	
Mutual Insurance Associa- tions usually stipulate for	231		
Existing and future dis- putes may be referred to	232		

	PAGE		PAGE
Award (see <i>Arbitration and Arbitrator</i> .)		Form of agreement by holder of bill of lading to indemnify captain, &c .	243
Ballast		Births at Sea	
Must be furnished by the shipowner	33	Registration of	230
Heavy merchandise may be used as	33	Board of Trade	
Bar Harbour		To superintend merchant ships and seamen, &c. .	252
Precautions to be taken by captain while loading in .	41	Officers to make reports to .	252
Barratry		To inquire into cause of accidents	252
A peril usually insured against	144	To appoint Inspectors of ships	252
Definition and examples of .	152	To supervise measurement of ships	253
Bill of Exchange		Alteration in name of ship must be approved by .	254
Duty of the parties when the freight is payable by .	101	Provides all shipping forms, &c. . . .	258
What is meant by a "good and approved bill" .	101	Elects four members of Marine Boards	260
Bills of Lading		Controls superintendents of Mercantile Marine, &c. .	260
If they are to be signed at "any rate of freight" difference should be paid in cash	9	Issues certificates of competency and service to masters, mates, and engineers	261, 262
Are the evidence of the shipment of the goods mentioned therein .	25	Licenses suitable persons to procure seamen and apprentices	263
Should provide for payment of freight and other conditions named in charter.	25, 26	To prescribe the form of allotment notes	265
Indorsee has now the same rights and liabilities as original holder	26, 312	To facilitate the remittance of seamen's wages and the establishment of Savings' Banks for them	266
Contents of bills of lading	27-30	Wages and effects of deceased seamen dealt with by the	267
Should name same rate of freight as charter	28	Examinations of provisions and water on board ship to be reported to	270
Signing	30	To issue scales of medicines	270
Stamp duties	31	To superintend supplies of lime juice	270
Master cannot be compelled to sign a second set for same goods	31	Inspectors of medicines to be appointed by	270
Must be produced by consignee before captain is bound to deliver cargo .	89	To survey accommodation for crews on board ship .	271
Not binding on shipowner if the goods were never put on board	92	Medical inspectors of seamen to be appointed by .	272
If not produced by consignee captain can land the cargo	93	When may inquire into incompetency or misconduct of certificated masters, mates, and engineers .	273

	PAGE		PAGE
Powers of, in dealing with certificates	273	Provisions as to sea-going & passenger ships carrying	284
Naval Court shall report to	277	Bottomry	62-64
Deaths of seamen at sea to be inquired into by	278	Form of bottomry bond	249
Registration of seamen is under the control of	278	Breaches	
Form of official log to be sanctioned by	279	Of agreements to load	45
Prosecution for unseaworthiness must be with sanction of	281	On homeward voyage	119
Powers and liabilities of, with unseaworthy ships	282, 283	British Ship (see Ship)	
May take the draught of water of seagoing ships	284	British Subject	1, 252
May make provisions as to boats and buoys of seagoing ships	284	Broken Stowage	
Duties of, respecting lights, fog signals, meeting and passing, &c.	286	To be supplied by merchant	41
Private signals may be sanctioned by	287	Brokers (see Shipbrokers, Insurance Brokers, &c.)	
Adjustment, &c., of compasses in sea-going passenger steamships under control of	287	Builder's Certificate	
Survey of passenger steamers by	288	To be produced before ship is registered	255
Accidents to be reported to Powers of, as to pilots and pilotage	290, 291, 292, 293	Registrar retains the	256
Powers of, as to lighthouses	297, 298	Cabin	
Investigations into shipping casualties held at the instance of the	299, 300	Charterer has no right to put cargo in	40
Wreck matters under general superintendence of	301	Captain	
In salvage matters, powers of the	302, 303	May enter into charter-parties	7
Inquiry into liability for loss of life by the	308	If the charter is made by him he is personally liable to the merchant	8
May take proceedings in name of their officers	310	Personally liable if he signs bills of lading for goods which were never shipped	92
Dues, tolls, or rates on ships, &c., can only be sold or mortgaged with sanction of	312	Punishment if he fails to stand by and render assistance after collision, &c. 183,	286
Boats and Buoys		His certificate may be suspended or cancelled on an investigation into a shipping casualty	185, 273
Insured by ordinary ship's policy	140	The same on Local Marine Board inquiry	200, 272
		The same on Naval Court inquiry	201, 276
		Must, under penalty, deliver up cancelled or suspended certificate	186, 273
		Practical questions in navigation to be attended to by	197
		May be superseded by Naval Court	202

	PAGE		PAGE
Warranty of seaworthiness in agreement with the 207,	281	To note protest, and have damage surveyed . . .	58
Change of, to be endorsed on ship's register . . .	255	Not to incur extraordinary expenses in repairing damage during voyage, so long as he makes ship seaworthy . . .	58
Examination of . . .	261	To act on his own judgment and responsibility . . .	59
Provisions as to granting certificates of competency to . . .	261	In landing cargo during repairs . . .	59
Right of, to recover wages .	267	Not to delay completing repairs . . .	60
Jurisdiction of Court of Admiralty in wages, &c., actions . . .	267	To save all he can if ship is wrecked . . .	62
Rights of, in case of illness or injury . . .	271	As last resource to sell ship .	61
May be removed by Court of Admiralty . . .	272	To give full particulars of accidents in writing home to his owners . . .	62, 159
Misconduct of master, endangering life or limb, a misdemeanour . . .	272	As to borrowing money on bottomry . . .	68
Crimes committed by, on high seas or abroad . . .	279	Preliminary steps before borrowing on bottomry . .	63
Provisions for entering Royal Naval Reserve . . .	281	May dismiss salvors . . .	65
How can obtain pilot's license.	292	To have a strict look-out kept . . .	70, 198
Non-liability of, where there is a compulsory pilot on board . . .	296	To enter particulars of collision in official log . . .	70, 279
Captain, duty of		To assist a ship which he comes into collision with . . .	71, 182, 286
As to stowing cargo . . .	34, 35	As to mooring the ship at end of the voyage . . .	88
Not to take on board more than ship can safely carry .	40	As to foul berths . . .	90
Not to take on board more than ship can leave harbour with . . .	41	As to giving notice of ship's arrival to the consignee . .	89, 91
To keep an account of quantity of cargo loaded and discharged . . .	42	To see that the person to whom he delivers cargo is holder of a properly endorsed bill of lading . .	89
To give notice to merchant at once, if any irregularity occurs in loading . . .	43	To prepare for delivery at once, on arriving at port of discharge . . .	89
When packages are suspected to contain dangerous goods .	43	To copy indorsements made on merchant's bill of lading . . .	89
On relanding cargo . . .	44	When adverse claims are made to the cargo . . .	89
On breach of agreement to load . . .	45	To have cargo surveyed if he has met with bad weather . . .	90
As to employing pilot . . .	50	To have hatches, cargo, dunnage, &c., surveyed, if the cargo is damaged . . .	94
Must not interfere with the pilot . . .	54		
When accidents occur during the voyage . . .	54		
As to transshipping cargo .	54, 56, 60		
How he is to raise money abroad to pay for repairs .	57, 62		

PAGE	PAGE
In enforcing lien on the cargo for freight, &c. 92, 101-105, 313	Where certificate of registry is lost abroad . . . 255
To obtain amount of general average due from cargo or security therefor, before delivering same 93, 163	Not to use improper certificate of registry . . . 256
To settle claims for demurrage abroad . . . 111	As to provisional certificate of registry . . . 256
To enter in log sacrifices, &c., giving rise to general average claims . . . 163	In engagement of seamen . . . 262
In making protests . . . 117	To produce certificate on signing agreements with crews . . . 264
As to giving notice to homeward charterer . . . 119	To post up copy of agreement with crew on board ship . . . 265
When merchant neglects to furnish the homeward cargo 119	On discharging and paying crew . . . 265
To wait the whole of the lay-days . . . 120	To report on character of seamen when discharged before Superintendent . . . 266
When there is danger of being frozen up . . . 120	On leaving seamen abroad . . . 268
Where merchant offers a different cargo than that agreed 120	In respect of provisions, health, and accommodation of crew . . . 270
To see that port or voyage is not altered without express authority . . . 120	To allow seamen to make complaint . . . 272
To give evidence of casualty when required . . . 181	To enter note of offences of seamen in official log . . . 274
To attend official investigation if summoned . . . 190	To arrest deserters . . . 274
Under penalty to deliver up his certificate to Board of Trade when cancelled or suspended . . . 186	To enter fines of seamen in official log, &c. . . 275
To use the lead . . . 197	To hand all papers over to his successor . . . 275
To use the log . . . 197	As to keeping official logs . . . 279
To verify his position on voyage . . . 197	To register births and deaths . . . 280
To see compasses are in good order . . . 197	Not to take an unseaworthy ship to sea . . . 281
As to look out . . . 198	On detention of ship upon charge of unseaworthiness . . . 282
Not to go too great a speed. 198	To enter draft of water and particulars of clear side in official log . . . 284
As to loading . . . 198	To provide boats and buoys . . . 284
To have good charts . . . 198	As to grain cargoes . . . 284
On leaving the deck . . . 199	As to deck cargoes . . . 285
To produce log and give information to inspectors, &c. 252	As to lights and fog signals. 286
To see that the particulars marked on British ships are not altered or removed . . . 253, 254	In meeting and passing ships . . . 286
To enter particulars of deck and loadlines in agreements with seamen . . . 254	Of passenger steamers . . . 288
	In dealing with passengers . . . 289
	Reporting accidents . . . 290
	As to dangerous goods . . . 290
	As to signalling pilots . . . 292
	To employ pilots in compulsory district . . . 293
	(See also <i>Cargo, Log, Seamen, &c.</i>)

	PAGE		PAGE
Calling for Orders . . .	67	Weighing of, who pays for . . .	96
Cargo		Cannot be abandoned to the shipowner to avoid payment of the freight . . .	99
Quantity of each kind should be stated in charter . . .	9	May be landed by Captain subject to lien for freight . . .	103, 313
Under time charters . . .	21	Master to give notice of his readiness to load homeward cargo . . .	119
Stowage of . . .	84, 85	If not supplied may re-charter or sail home in ballast . . .	119
Dunnage for . . .	84	Must wait all lay-days for . . .	120
May be taken as ballast for ship's benefit, if merchant is not prejudiced by doing so . . .	33	What to do when a cargo contrary to agreement is offered . . .	120
Cargo to be supplied must be the same as is named in the charter . . .	39	Valuation of, in general average . . .	166
If impossible to obtain, merchant is liable to damages . . .	40	List of losses and expenses which are particular average on . . .	178
Stowed in cabin, extra freight is payable for . . .	40, 41	Provisions as to grain cargoes . . .	217
Deck load of . . .	40	Provisions as to deck cargoes . . .	218
Receiving of, outside the harbour . . .	41	Form of notice of stoppage for freight on . . .	245
Provisions as to full cargo . . .	41, 42	Form of notice to wharfinger to sell for freight due for (See also <i>Full Cargo, Homeward Cargo, Grain Cargo, Deck Cargo.</i>)	245
Account should be kept during loading and discharging of . . .	42	Casualties (see <i>Accidents and Inquiries into Shipping Casualties, &c.</i>)	
If insecurely packed should be refused, or the fact stated on bill of lading . . .	43	Certificates	
Damaged and dangerous goods . . .	43, 290	Of registry of ships . . .	3, 255
Relanding cannot be required by merchant till destination is reached . . .	44	Of mortgage . . .	257
Unless damaged by accidents . . .	44	Of sale . . .	257
Transshipment of . . .	54, 60	Of competency and service of Masters, mates, and engineers . . .	1, 261, 262
Captain may in urgent cases pledge or sell a portion of, to raise money for repairs . . .	56	For clearing inwards and outwards . . .	264
May be sold if an accident occurs, and it would spoil by keeping . . .	56, 58, 60	Of leaving seamen abroad . . .	268
Landing of, in captain's name, during repairs . . .	59	Of survey of passenger steamer . . .	288
May be pledged by bottomry bond . . .	62	Chain Cables	
Delivery of . . .	91	A deduction of one-sixth is made for, in general average adjustment . . .	165
Damage to . . .	94	Act, &c., referring to . . .	285
Liability of shipowner for damage or loss of . . .	94, 307		
Subject to shipowner's lien for freight . . .	101, 313		

	PAGE		PAGE
Character		Charts	
On discharge of seamen, master to report as to . . .	266	Provision of, for ship . . .	198, 199
		Should be of recent date, &c. . .	199
Charter-Party		Collision	
Need not be in writing . . .	7	When neither party is to blame . . .	69
May be made by captain . . .	7	When suffering party only to blame . . .	69
Mortgagees rights under . . .	7	When the other is solely to blame . . .	69
May be made by agent . . .	7	When both parties are to blame, total damage is divided equally . . .	69
Contents of . . .	8	Loss by, is a "peril of the sea" . . .	70
Verbal statements not bind- ing . . .	8	In estimating damage, no deduction is made of one- third new for old . . .	70
Customs are binding if not inconsistent with the words of the charter . . .	9	Ship in, is supposed to be under management of her registered owners . . .	70
Proportion of goods forming the cargo should be stated . . .	9, 97	Precautions to avoid . . .	70
If bills of lading to be signed at "any rate of freight" . . .	9	Master's duty in case of . . .	71, 286
Provisions necessary to se- cure lien for the freight . . .	9, 12	Each ship is bound to assist the other . . .	71, 286
Loading and discharging under . . .	10	Board of Trade rules for prevention of . . .	73-81, 286
Power to sublet . . .	10	Notes on the rules . . .	84
Provisions as to depth of water, &c., in . . .	18, 14	Particulars of, to be entered in official log . . .	70, 280
Warranties in . . .	14-19	Punishment of person in charge of ship who ne- glects his duty upon . . .	183, 286
Interpretation of . . .	19	(See also <i>Rule of the Road</i>)	
Effect of customs and trade usages upon . . .	20	Collision Diagram . . .	82
Time charters . . .	21	Colonial Legislatures	
Alterations made after sign- ing in . . .	23	May make provisions as to Merchant Shipping . . .	311
Stamp duties on . . .	23, 24	Colours	
Is the evidence of the contract . . .	25	National, to be worn by British ships . . .	259
To load at several ports . . .	32	Commissions (see <i>Ship Brokers</i> , <i>Insurance Brokers</i> , &c.)	
Stipulations as to ballast in . . .	33	Compasses	
If payment of freight agreed in cash no discount can be deducted . . .	100	Adjustment of . . .	197, 198
		In passenger steamers . . .	287
Charterer		Complaint	
Limitation of his liability . . .	12	Seamen to be permitted by master to make . . .	272
Is liable on all agreements contained in the charter . . .	25		
Is always liable to pay the freight . . .	98		
Duty of, to have the cargo ready for loading . . .	109		
Advancing freight, has an insurable interest in the money advanced . . .	128		

	PAGE		PAGE
Computation		Consuls	
Of the lay-days	10, 111	To furnish information to Board of Trade	252
Of demurrage days	10, 111	To revoke certificates of mortgage or sale when instructed	258
Of the freight	99	Seamen are shipped abroad before the British Consul	264
Of freight on damaged cargo	99	Wages and effects of deceased seamen to be handed to	268
Of dead freight	41	Duties as to seamen discharged and left abroad	268, 269
Condition Precedent (see Warranty.)		To relieve distressed British seamen	269
Consignee		To hear complaints as to provisions	270
Only liable to carry out bill of lading	25	May pay seamen's medical expenses	271
When liable to pay demurrage	26	To hear seamen's complaints	272
If insolvent, goods may be stopped <i>in transitu</i>	86	Offences for which seamen are fined must on discharge be proved before	275
Where he can order the ship to be discharged	88	May summon a Naval Court, &c.	276
Duty of, to watch for arrival of ship	91	Order for imprisonment by a Naval Court must be approved by senior Consul	277
When he is liable to pay freight	98	To see ship's agreement	279
What amount of freight he is liable to pay	99	Contraband	
Has an insurable interest in goods	127	Goods should not be taken on board	40
Liable to pay pilotage for ship	293	Council	
Liable to pay light dues	297	Orders in	812
Form of agreement for consignee and surety to pay freight	244	Crimes	
Consignor		On high seas and abroad	277
May stop cargo <i>in transitu</i> if consignee is insolvent	86	Customs	
Constructive Total Loss		Charters are construed subject to the customs of the port	9
What is a	61	Of the port in reckoning lay-days	10, 111
Notice must be promptly given by owners of	61, 155	In lightening ship before reaching the quay	14
After abandonment master to act for underwriters	62	To be considered in interpreting charters	20
Underwriters must accept or reject abandonment promptly	155	Only admissible to <i>explain</i> , the meaning not to <i>alter</i> charter-party	20
Money spent in endeavouring to save the ship may be recovered from underwriters	144, 159		
(See also <i>Insurance, &c.</i>)			

	PAGE		PAGE
<i>Local</i> , only binding when the parties know of the custom or reside at the port	20	Deductions of, by merchant from freight for	102
<i>General</i> , are supposed to be known to all engaged in trade	20	Dangerous Goods	
Of the port in loading ship	33	Should be refused by the captain	43, 290
For merchant to provide ballast is not valid	33	Shipper is bound to inform captain of their nature	43, 290
Cannot be set up to override the law	33	Power of captain to break open packages suspected to contain	43, 290
To deduct discount from freight when charter provides for cash payment	100	What are	290
In interpretation of insurance policies	132	Nature of, must be marked on outside of parcels containing	290
Commissioners of	312	Penalties for non-observance of provisions as to	290
Damaged Goods		Dangers	
Should be specified in bill of lading	30	And accidents of the seas	5, 95, 290
If captain suspects goods are damaged he should require package to be opened	42	Days	
How the freight on damaged goods is computed	99	Means <i>running days</i> , unless the contrary is expressed	111
Lien on	102	When lay-days begin and end	110
Damage		Dead Freight	
In letting goods down into ship's hold to be paid by shipowner	35	When payable	41
By ship being struck by a sea when chargeable against underwriters	48	How the amount is to be computed	100
Caused by foul berth	90	No lien on cargo for	101
Liability of shipowner for damage to cargo	94	Death	
Demurrage while repairing	116	Of seamen during voyage	267
Damages		Particulars of effects and wages of deceased seamen to be entered in the official log	267, 280
Payable by shipowner if he cause unnecessary delay in loading	32	To be inquired into by shipping master	278
When payable by charterer	46	Occurring at sea to be entered in official log	280
Payable by shipowner when he fails to comply with charter	47	Deck Cargo	
When he delays sailing after cargo loaded	48	Is at shipowner's risk	11
When the vessel deviates during the voyage	49	Shipowner not bound to accept unless customary	40
		When extra freight is payable for	40
		Not to be carried during prohibited times	40, 285
		Prohibited time for timber	40, 218, 285
		When contributed for in general average	11, 161

	PAGE		PAGE
Not insured by ordinary policy, unless specially named or carried, pursuant to universal custom . . .	141	Shipowner can claim at a higher rate for all detention after the demurrage days expire . . .	110
Deck Line		Can only arise at ports of loading and discharge . . .	110
How and where to be marked . . .	253	When lay-days begin . . .	110
Master to enter particulars of, in official log and agreement with the crew . . .	253	When ship is to be repaired before receiving cargo . . .	111
Deduction one-third new for old		When charterer has to make alterations in ship . . .	111
Only made in claims against underwriters (and not in collision cases) . . .	70	Captain has right to settle demurrage abroad . . .	111
Is made in adjusting general average . . .	165	Cases in which shipowner is entitled to . . .	112
Delivery of the Cargo		Cases in which shipowner is not entitled to . . .	114
Where the ship is to go to discharge . . .	91	While repairing damage . . .	116
Cannot be required till bill of lading is produced . . .	89	Ceases as soon as loading completed. . .	120
Duty of consignee to provide lighters when necessary . . .	92	Even if ship gets frozen up during the delay . . .	120
When bill of lading is not produced . . .	93	Depth	
Damaged cargo . . .	94	Of water should be stated in charter in case of doubt . . .	13
What is right and true delivery . . .	100	Shipowner's duty to inquire for information on the subject . . .	13
Demurrage		Derelict	
How the number of days is to be reckoned . . .	10, 111	Definition of . . .	66
Custom at London . . .	10, 111	Amount of salvage usually awarded for a . . .	66
Not chargeable for delay caused by waiting for sufficient water to enter harbour . . .	10	Desertion	
Unless depth of water guaranteed by the charter . . .	13	Of seamen . . .	274, 275
For detention when merchant prevents captain signing bills of lading . . .	81	Enticing seamen to desert . . .	275
When chartered "as near thereto as she may safely get" . . .	91	Detention	
No lien on cargo for . . .	103, 111	Of unseaworthy ships . . .	211, 281
When no specified time is named in the charter . . .	109	(See also <i>Demurrage, Court of Survey, Unseaworthiness.</i>)	
When ship to be loaded in regular turn . . .	109	Deviation	
"Usual dispatch," meaning of . . .	109	From the direct course to port of loading . . .	32, 49
		Must not be made unnecessarily during the voyage. . .	49
		When it is justifiable . . .	49
		Effect of, when there is a bottomry bond on the ship . . .	62
		Vitiates a policy of insurance made for the voyage . . .	49, 134

	PAGE		PAGE
Digest		Engineers	
Of Merchant Shipping Acts, 1854 to 1876 inclusive	252-314	When certificated engineers are compulsory . . .	262
Discharge, Port of		Grades of . . .	262
Calling for orders on home- ward voyage . . .	67	Examinations for . . .	262
Discharge of Seamen		Colonial certificates for . . .	262
In the United Kingdom . . .	265	Local Marine Boards may inquire into alleged in- competency or misconduct of certificated . . .	273
Abroad . . .	268	Certificates of, may be can- celled or suspended on a formal investigation . . .	273
By Naval Courts . . .	276	Procedure on formal inves- tigations . . .	188, 299
Discharge of Cargo (see Cargo).		Engineer Assessors, 183, 213, 300	
Discharging Afloat		Surveyors of passenger ships, report on certificates of . . .	288
Shipowner is supposed to know the depth of water at the port of discharge when he enters into the charter . . .	13	Equities	
Discipline		May now be enforced against owners, &c. . .	255
Of crew . . .	274, 275	Examiners	
(See also <i>Captain, Mates, Seamen, &c.</i>)		For certificates of masters and mates, who appointed by . . .	261
Discount		Powers of . . .	261
Cannot be deducted from freight when charter pro- vides for cash payment . . .	100	For certificates of engineers . . .	262
(See also <i>Customs.</i>)		For certificates of pilots . . .	292
Distress		Examination (see Captain, En- gineers, and Examiners.)	
Signals of . . .	287	Fines	
Dock Warrants . . .	107	Of seamen to be noted in official log by master . . .	275
Draught of Water (see Water, Loading, &c.)		How to be deducted from wages . . .	275
Dunnage		Fog	
Must be supplied by the shipowner . . .	34	Signals during . . .	78, 286
Merchandise may be used if no extra space is occupied. . .	34	Steam ships shall go at a moderate speed in . . .	80, 198
Emigrant and Passenger Ships		Look-out during a . . .	198
Provisions as to . . .	291	Foreign Ships	
End of the Voyage . . .	88	Detention of, if over-loaded . . .	216, 284
Engagement		Appeal to Court of Survey . . .	217, 284
Of seamen . . .	263, 265	Special procedure on ap- peal . . .	217, 284
Agreements of . . .	263	Board of Trade Regulations apply to, when in British waters . . .	286
Penalty for seamen giving wrong name on . . .	275	In coasting trade, provisions as to . . .	312

	PAGE		PAGE
Foreign-going Ships		Generally not payable till	
Meaning of the term . . .	260	the ship reaches her destination . . .	54
Forfeiture		How calculated when part	
For using improper certificate of registry . . .	256	cargo sold for repairs during voyage . . .	56
Of unqualified person's interest in a British ship . . .	259	Should be obtained before whole cargo delivered . . .	92
Of shares in British ships devolving on unqualified persons, unless sold . . .	256	Payment of . . .	97
Where a person makes a false declaration . . .	259	Is not due till end of voyage, unless otherwise agreed . . .	97
Of ship improperly using British flag . . .	259	When money advanced for, can be recovered back if ship lost . . .	97
British ship concealing national character . . .	259	Parties liable to pay . . .	98
Of dangerous goods . . .	290	Parties entitled to receive . . .	98
Forms		How amount to be reckoned . . .	99
Agreement for sale of ship . . .	238	On damaged cargo . . .	99
Navigation agreement . . .	239	Payment of, cannot be avoided by abandoning damaged cargo . . .	99
Average agreement . . .	242	No discount to be deducted if charter provides for payment in cash . . .	100
Agreement by holder of bill of lading to indemnify captain . . .	243	Merchant never liable to a higher rate than named in charter . . .	100
Agreement by consignee and sureties to pay freight . . .	244	Shipowner's lien for . . .	101, 313
Notice of stopping of freight . . .	245	Duty of merchant to ascertain the amount of . . .	101
Notice to wharfinger to sell cargo for freight . . .	245	Duty of the parties when payable by bill . . .	101
Power of attorney to appoint agent to act abroad . . .	246	In some cases of charter lien for, is lost . . .	102
Agreement to refer disputes to arbitration . . .	247	When bill of lading freight is less than amount named in charter . . .	108
Bottomry bond . . .	249	When captain cannot deliver the cargo and has to bring it home again . . .	121
Foul Berths . . .	90	Insurance of . . .	141
Freight		Upon goods jettisoned . . .	165
Should be made payable in cash on delivery of cargo . . .	9	Valuation of, in general average contributions . . .	166
Only payable on cargo put on board . . .	11	List of losses and expenses which are particular average on . . .	177
Under time charters . . .	21	Form of agreement by consignee and surety to pay . . .	244
Extra freight payable for deck load when ship is chartered for a lumpsum . . .	40, 100	Form of notice of stoppage of cargo for . . .	245
Deductions from, by merchant for damages . . .	97, 102	Form of notice to wharfinger to sell cargo for . . .	245
Payable <i>pro rata</i> if merchant accepts the cargo before reaching its destination . . .	54, 100		

	PAGE		PAGE
Full Cargo		Where more than one-third in bulk, how to be se- cured	217, 284
Should be agreed for, or freight will only be pay- able on the quantity shipped	11	Responsibility of owner and master when same shifts	217, 284
Does not include right to stow in cabin or on deck	40	Health of Seamen	270
If agreed for, merchant bound to supply broken stowage	42	Homeward Cargo	
If agreed for, must be sup- plied, even if ship turns out to be larger than was expected	42	Master to give notice that he is ready to take in . . .	119
		Course to be taken by the captain if merchant ne- glects to supply homeward cargo	119
General Average		Refusal to load must be clear and definite.	119
Should be paid, or bond ob- tained, before cargo is given up.	93	Master bound to wait all the lay-days	120
Lien for	93, 103, 163	Home-Trade Ships	
Definition of	161	Meaning of the term	260
How divided	161	Meaning of home-trade pas- senger ship	260
Money paid for salvage services is reckoned as . .	162	Illegal Voyage	
Requisites to entitle to re- cover as	162	Charter for, cannot be en- forced	20
Can generally only be re- covered where something is saved	163	If voyage becomes illegal after charter made, it cannot be enforced	45
Particulars of, should be carefully noted in log . .	163	Cannot be insured	129
Should be adjusted at port of discharge abroad . . .	163	Imposition	
Master should note protest of losses and expenses which are	163	Protection of seamen from . .	272
Liability of underwriters for	164	Impossibility	
How amount of the loss is to be calculated	164	Of obtaining cargo, mer- chant is liable to pay damages	40
What property contributes	165	Of repairing ship after acci- dent, captain may then sell the wreck	61
Valuation of the property which is to contribute . .	166	Interest (see <i>Bill of Lading</i>, <i>General Average</i>, and <i>In- surance</i>.)	
Example of.	167	Inquiries into Shipping Casualties	
List of losses of frequent occurrence which are con- tributed for as	169-173	Preliminary inquiry	181, 299
Papers to be sent to Aver- age Adjuster	179		
Form of average agreement	242		
Grain Cargoes			
Definition of	217, 284		

	PAGE		PAGE
Constitution of the Court	181, 299, 300	Warranties express and implied in . . .	132-186
In what cases can be held . . .	181, 299	Part owner or ship's husband cannot insure co-owner's share without authority . . .	4, 130
Responsibility of master in case of collision . . .	182	Description of policy of . . .	136
Appointment of wreck commissioner . . .	183, 300	Provisions as to the name of assured or agent in policy . . .	137
Appointment of assessors	183, 300	Description of the voyage insured . . .	138
Remuneration of stipendiary magistrates holding	184, 300	Under voyage policy there must be no deviation . . .	139
Powers of Courts of Inquiry . . .	185, 300	Time policy can last only twelve months . . .	139
Power to cancel or suspend the certificates of masters, mates, and engineers on	186, 273	Provisions as to the description of the property insured and the duration of the risk . . .	140
No certificate can be suspended unless statement of the case has been previously served on owner thereof . . .	186, 273	Advantage of "Liberty to touch and stay" clause . . .	142
Also unless one assessor concurs . . .	186, 274	Valuation of property insured . . .	143
Officers must deliver their certificates to the Court	274, 300	Perils insured against . . .	144
Court has power to award costs of . . .	186, 300	The assured is bound to save all he can . . .	144
Courts must report to the Board of Trade	187, 273, 300	The policy should contain the agreement to insure and the receipt for premium . . .	145
Court has no power to deal with certificates unless ship has sustained "serious damage" . . .	187, 273	Construction of the usual "memorandum" clause . . .	145
General rules regulating procedure at . . .	188, 300	Collision clause . . .	147
Affidavits may be used with sanction of Court at . . .	195	Mutual Insurance Associations, their warranties and rules . . .	148
		Signature of policy by the underwriters . . .	148
Insurance, Marine		Stamp duties on marine policies . . .	149
Definition of policy of . . .	127	Cannot be stamped after execution . . .	149
Strict good faith essential in A contract of indemnity . . .	127	Transfer of policies, how effected . . .	150
What are insurable interests . . .	127, 128	Losses under the policy of . . .	150-160
Wager policy void . . .	128	Losses on freight . . .	153
What are illegal insurances	129	Losses under open policies of . . .	154
Insurance broker must exercise skill and diligence . . .	130	Losses under valued policies of . . .	154
Is entitled to 5 per cent. commission . . .	130	Actual total loss . . .	154
Must obtain stamped policy	130	Constructive total loss	155-159
Effect of misrepresentation and concealment . . .	131		

	PAGE		PAGE
Notice must be given within reasonable time of unconditional abandonment	155	Legal Procedure	
Underwriter must at once accept or reject abandonment	155	Under Merchant Shipping Acts	309
When the assured can claim more than the amount insured	159	In Scotland	311
Adjustment of Losses	159	Legal Quays Acts . . .	105
		(See also <i>Lien</i> .)	
Insurance Broker		Letters	
Effects policies with private underwriters	129	Altering charter must be stamped	24
Bound to exercise skill and diligence	130	Of master to owners after accident should be full and explicit	62, 156
Commission payable to	130	Liability (see <i>Shipowner, Merchant, Captain, Consignee, &c.</i>)	
Must procure properly stamped policy	130	Lien	
Is liable to underwriters for premiums	130	Of shipwright for his bill for repairs	59
Has lien on policies for amount of premiums	130	Of salvors	67
Interpretation (see <i>Charter, Bill of Lading, Insurance, &c.</i>)		Lien on Cargo	
Jettison		Only extends to the sum named in the bill of lading	9
Of cargo	165, 167	No lien for freight unless it is payable on delivery	9
(See also <i>Deck Load</i> .)		Shipowner's lien for freight and general average need not be provided for in the charter	12
Landing Cargo		For freight	101
Captain's power to land when no bill of lading is produced	93	When freight is payable by bills	101
Formalities to be observed to preserve the lien for freight	93, 103	When bill of lading freight is different from the freight named in the charter	103
Lascars		For general average claims	103, 163
Agreements with	311	No lien for demurrage or dead freight	12, 103, 111
Lay-days		When goods are landed by captain	103 to 105
When they begin	110	Wharfinger's lien for his charges	104
What days are reckoned	111	How shipowner's lien may be lost	104
Captain bound to wait his lay-days	120	What is a waiver of	104
Leak			
Merchant entitled to compensation for damage caused by leaky state of the ship	82, 84		

	PAGE		PAGE
Duty of owner of the goods on which lien is claimed .	105	Who can be members of .	260
Special Acts of Parliament in the Port of London	105-108	Duties of .	261
Lights		Have power to investigate charges of incompetency or misconduct against masters, mates, or certificated engineers .	200, 273
On ships, provisions as to .	286	May cancel or suspend certificates and may award costs .	200, 273
May be inspected by Board of Trade .	286	The person bringing the charge before, has the conduct of the case .	201
Dues for .	297		
Prevention of false .	298	Lodging-House Keepers	
Lighters		Provisions as to seamen's .	272
Duty of consignee to provide, in unloading .	92	Loading the Ship	
Who is responsible for damage done while cargo is in the lighters .	92	When she is chartered to load at several ports .	32
Lighthouses		If no time named, she must be loaded within a reasonable time .	32
Management of .	296	Warranty as to .	32
Dues for .	297	Ballast necessary in .	33
Erection of new .	298	Dunnage necessary in .	34
Damaging lights .	298	Stowage of the cargo .	34, 35
Colonial .	298	Recommendation of Lloyd's Committee as to stowing mixed cargoes .	36-39
Lime Juice		With damaged or dangerous goods .	43, 44
To be provided in ships .	270	After relanding cargo .	44
Penalty for not giving seamen .	270	Breaches of agreement in .	45-47
Seamen are liable to penalty for not taking .	270	In bar harbours .	41
Limitation of Time		Precautions against delay when there is danger of being frozen up .	45, 120
For proceedings under the Merchant Shipping Acts .	310	Re-chartering when merchant refuses to load .	46, 119
Liquidated Damages		Ship must not deviate or delay in proceeding to her port of loading .	48
For breach of charter .	47	Log Book	
Lloyd's Agents		Sacrifices and expenses giving rise to general average claims should be entered in .	163
Have no official authority in directing repairs abroad .	59	Positions of ship during voyage should be carefully entered in .	197
Loadline		Official log to be kept .	279
Compulsory on certain ships .	221		
How to be marked .	221		
Penalties in respect of .	222		
Local Marine Boards			
To appoint superintendents of Mercantile Marine .	260		
To control superintendents and shipping offices .	260		
How elected, &c. .	260		

	PAGE		PAGE
Captain must enter any refusal of seamen to take lime juice, &c., in . . .	270	Marks	
All offences of seamen to be entered in . . .	274, 275	Particulars marked on British ships . . .	253
All desertions to be entered in . . .	274	Marriage	
Proceedings of Naval Courts to be entered in . . .	277	Registration of persons acquiring shares in ships by reason of . . .	256
List of other matters which must be entered in the official log . . .	279	At sea to be recorded in the official log . . .	279
Entries to be received in evidence . . .	280	Master (see Captain.)	
Of foreign-going ships, to be delivered to superintendent on discharge of the crew . . .	280	Mates	
Of home-trade ships, to be delivered half-yearly . . .	280	Examination for certificates of . . .	261
Particulars of collisions to be entered in . . .	280	Colonial certificates of . . .	262
How entries are to be made and by whom attested . . .	280	When certificated mates necessary . . .	261
Log		Courts of Admiralty have power to remove master on complaint of . . .	272
Use of, most important . . .	197	Inquiry into conduct of, by Local Marine Board . . .	200, 272
London		Powers of Courts of Inquiry to deal with certificates of . . .	186, 273, 299
Custom at, in reckoning lay-days . . .	10, 111	Powers of Naval Court to deal with certificates of . . .	201, 276
Pilotage district . . .	52	Medical Inspection	
Special Acts of Parliament in, relating to lien for freight . . .	105-108	Of seamen . . .	271
Look-Out		Medicines	
Great care should be taken as to . . .	70, 80, 198	To be provided for ships . . .	270
Loss (see Insurance, General Average, Constructive Total Loss, and Total Loss.)		Scale of, to be published . . .	270
Majority		Directions for administering . . .	270
Of owners have the right to employ the ship . . .	4	Memorandum, The	
Marine Insurance (see Insurance, Underwriters, Insurance Brokers, &c.)		In Marine Insurance policy . . .	145
Marine Store Dealers		Mercantile Marine Fund	
Regulations respecting . . .	305	How formed . . .	299
		How applied . . .	299
		Merchant	
		When he has the right to abandon the charter-party . . .	14, 18
		When he has not the right to abandon . . .	16, 18
		Entitled to compensation for damage caused by shipowner's default . . .	34, 94

	PAGE		PAGE
Merchant, Liability of		Navy	
When he loads a cargo not named in the charter . . .	39	Seamen volunteering into . .	269
When it is impossible to ob- tain the stipulated cargo . .	40	(See also <i>Naval Courts</i> and <i>Salvage</i> .)	
As to loading outside the harbour	41	Naval Courts	
As to providing broken stowage	41	Constitution of	201
To load a full cargo if agreed	41	Matters they have cogni- sance of	201
(See also <i>Charter-party</i> , <i>Cargo</i> , <i>Freight</i> , <i>Demur- rage</i> , <i>General Average</i> , <i>&c.</i>)		May unship a master and appoint another in his stead	202
Merchant, Duty of		May decide questions as to seamon	202
To supply the cargo named in the charter	39	May send offenders home for trial	202
In ascertaining amount of the freight	101	May order payment of costs Its orders shall be entered in official log of the ship .	202
Merchant Shipping Acts		May cancel or suspend cer- tificates of officers	202
Digest of	151-314	Shall report to Board of Trade	202
Month		Have same summary juris- diction as two justices under Merchant Shipping Acts	203
Means calendar month . . .	21	Naval Reserve	
Mortgage		Provisions as to	281
Of ship, how effected	6, 257	Neap Tides	
Registration of	6, 257	Precautions by captain against being delayed by .	41
Powers under	6, 257	Negligence	
Discharge of	6, 257	Captain and owner liable, although damage is ex- cepted in bill of lading . .	29
Certificate for mortgage abroad	257	Shipowner's liability for . .	30, 296, 307
Of dues, tolls, rates, &c., must have sanction of the Board of Trade	312	Shipowner liable, even if the damage would have hap- pened in any event	95
Mortgagee		Offences	
Is bound by charters made by shipowner	7	By seamen	274, 275
Is entitled to the freight after he takes possession .	7, 98	Of seamen to be entered in the official log	274, 279
Mutual Insurance Associa- tions		Punished by Naval Courts .	277
Rules annexed to policies considered warranties . . .	148, 153	Punishment of	274, 275
National Character		Official Log (see <i>Log</i>.)	
Of ships	259		
National Colours			
Provisions as to British ships carrying	259		

	PAGE		PAGE
Overloading		Certificate on expiry to be delivered up	288
Stipulations in charter to prevent	21	Certificate to be hung up on board the ship	288
Plimsoll's disc a provision against	220, 253	Twelve passengers may be carried without a license	288
Survey of ships alleged to be unseaworthy by reason of	276	General provisions as to	239
Of foreign ships, how prevented	284	Payment of the Freight	97
Owners		(See also <i>Freight, Cargo, &c.</i>)	
Who may own British ships	1, 252	Penalty	
Declarations to be made by	255, 256	Named at the end of the charter does not increase liability of the parties, unless it is named and intended to be "liquidated and ascertained damages"	11, 47
(See also <i>Ship and Ship-owner.</i>)		Perils of the Sea	
Packing		Should always be excepted in charter	11
If goods are insecurely packed it should be stated in bill of lading	30	Loss by collision is a peril of the sea	70
Particular Average		What losses are included in the phrase	144, 151-154
Explanation of term	174	Pilot (see <i>Pilotage.</i>)	
What is particular average on ship	174	Pilotage	
List of losses and expenses which are particular average on ship	175	When compulsory	50, 293, 295
One-third new for old allowance	176	Exemptions from	50, 295
List of losses and expenses not particular average on ship	176	Duty of the pilot	53
List of losses and expenses which are particular average on freight	177	Limitation of shipowner's liability when pilotage is compulsory	53, 296
List of losses and expenses which are particular average on cargo	178	Master not to interfere with pilot	54
Papers to be sent to average adjuster	179	Powers of pilotage authorities	291
Passengers		Masters and mates may be licensed as pilots	292
Misconducting themselves, how to be dealt with	289	Pilot boats	292
Passenger Steamers		Signals for	292
Survey of	288	Pilot licenses	293
Certificate of fitness granted for	288	Compulsory districts for	293
Appeal from decision of surveyor under the Passenger Acts	216, 288	Rights and remuneration of pilots	293
		Parties liable to pay pilotage	293
		Offences of pilots	294
		Trinity House and sub-commissioners of	294
		London district	295

	PAGE		PAGE
Rates of pilotage (Trinity House)	296	Re-chartering	
Pilot fund (Trinity House)	296	When shipowner justifiable in	45
Appointment of sub-commissioners by Hull and Newcastle Trinity Houses	296	When homeward cargo not supplied	119
Plimsoll's Disc (see <i>Load-line</i> and <i>Deck-line</i> .)		Referees	
Policy (see <i>Insurance</i> .)		(See <i>Scientific Referees</i> .)	
Principal		Register	
Name of, should be stated in the charter	8	Master and owners have always a right to its possession	48, 256
When alleged agent is principal	11	Cannot be pledged as a security for money	48, 256
May claim benefit of any insurance effected by his agent	128, 188	Changes of captain to be endorsed on	255
Printed Part		Change of port of registry	258
Of charters is of as great weight as written part	19	Evidence of registry	259
Of policy of Marine insurance has less weight than written part	186	Registration	
Proportion		Of seamen	278
Of different kinds of cargo should be stated in charter	9	Of marriages at sea	279
Pro Rata Freight		Of births and deaths at sea	280
When payable	54, 100	Registry	
Provisions, Health, etc.		Of British ships	1, 254
Of seamen	270	Certificates of	3, 255
Protests		Of transfers	1, 256
When should be made	117	Of mortgages	6, 257
Before whom made	117	Anew, and transfer of	258
Who is to pay for them	118	Miscellaneous	258
Fees payable for	118	Re-landing Cargo	
Need generally only be made if wanted for use abroad	118	Cannot be required by merchant till destination is reached	44
(See <i>Captain, Insurance, General Average, &c.</i>)		Unless much damaged by accidents	44
Rats		Re-loading	
Shipowner liable for damage done by	94	Will be at shipowner's expense if the ship wants lightening to enable her to leave the harbour	41
Receiver of Wreck		Remittance	
Duties of, &c.	301	Of wages of seamen	267
		Repairs	
		Abroad, master may obtain money for, by bottomry bond	56
		Also by pledging or selling cargo	56

	PAGE		PAGE
Need not be done in a perfect manner . . .	58	Board of Trade rules at length . . .	76
Shipwright has lien for . . .	59	Rules of lights . . .	76
Ship should be surveyed before done . . .	58	Fog signals, &c. . .	78
Should be done without delay . . .	60	Rules of steering and sailing . . .	79
Master should report what are necessary at once to owners . . .	62	List of countries which have adopted British rules . . .	76
When temporary it should be so stated in protest and survey . . .	59	Binding on foreign vessels in British waters . . .	76
Temporary, are allowed in full in general average adjustment . . .	165	Collision diagram . . .	82
Also of ship on first voyage . . .	165	Notes of cases which have been decided on the rules . . .	84
Permanent, have one-third new for old deducted . . .	165	Running Agreements	
Representations		For foreign-going ships . . .	263
Of capacity of the ship . . .	42	Safe Berth	13
On effecting insurance policies . . .	181	Safe Port	
(See also <i>Warranty</i> .)		Meaning of the phrase . . .	68
Rescinding Charter		Safety Valves	
When voyage illegal . . .	20	In steamships	287
(See also <i>Abandoning Charter</i> .)		Sailors' Homes	311
Right and True Delivery		Sale	
Meaning of	100	Of shares in a ship belonging to one owner, cannot be demanded by co-owner . . .	5
Ropes, etc.		Of ship, does not transfer insurance policies, unless specially named . . .	127
Required in loading to be provided by captain . . .	35	Of ship	256
When allowed in general average	170	Certificate may be granted to authorise sale abroad . . .	257
Rules, General		Of dues, tolls, rates, &c., must be with sanction of Board of Trade . . .	312
For investigations into shipping casualties . . .	188	Salvage	
For regulating procedure of Courts of Survey . . .	223	Definition of	64
Rule of the Road		The service must be successful	65
When both ships have the wind free	73	Salvors must be volunteers . . .	65
When one of the ships is close-hauled	73	First salvors have the prior right	65*
When both ships are close-hauled	74	Unjust salvage agreement may be upset	66
What is "end on"	74	Amount of awarded	66
Steamships	75	Contributed for in general average	162
		Provisions of the Merchant Shipping Acts as to . . .	302-307

	PAGE		PAGE
Reasonable amount of salvage is to be paid to salvors	302	Complaints made by	272
For saving life	302	Protection of, from imposition	272
Settlement of disputes by magistrates, &c.	302	Lodging-house keepers	272
Jurisdiction of the Admiralty Court	303, 304	Discipline of	272
By her Majesty's ships	305	Offences of, and their punishment	274
General provisions as to	306	Desertion of	274
Of foreign ships	307	Giving wrong name	275
Seamen		Entry of fines of in official log	275
Complaints of unseaworthiness by	204, 215	Enticing to desert	275
Warranty of seaworthiness implied in agreements with	206	Harbouring deserters	275
Engagement of	263	Survey of ships alleged to be unseaworthy by	276
When agreement with necessary	263	Discharge of, by naval courts	277
Agreement to serve on foreign-going ship by	263	Crimes on high seas by	277
Running agreement with	263	Registration of	278
Agreement with home trade ship by	264	Scientific Referees	
Engaged in colonies	264	When appointed	215, 284
Agreement for transfer from ship to ship of	264	Powers of	216, 284
Alterations in agreements with	265	Seaworthiness	
Agreement with, to be hung up on board	265	Warranty of, always implied in voyage policies	133
Penalty when discharged before voyage begins	265	But not in time policies	134
Allotment of wages of	265	Warranty of, implied in agreements with master and crew	206
Discharge and payment of wages of	265	Several Ports	
On discharge before superintendent the master shall make a report of character of	266	Charter to	32
Remittance of wages for	266	In a voyage policy	135
Establishment of savings' banks for	266	Ship (British)	
Rights to wages of	266	Who may be owners of	1, 252
Recovery of wages by	267	Particulars to be marked on	253
Provisions as to wages and effects of deceased	267	Registry of	2, 254
Left abroad	268	Tonnage of	253
Volunteering into navy	269	Part owners	4, 255
Provisions, health, and accommodation for	270	Joint owners of	3, 255
Medical inspection of	272	National character of	2, 259
		Transfer of	1, 156
		Certificate of registry	255
		Husband	5
		Mortgage of	6, 257
		Registry anew and transfer of registry of	258
		Must use British flag	2, 259
		Forfeiture of	2, 259
		Shares in	3, 255

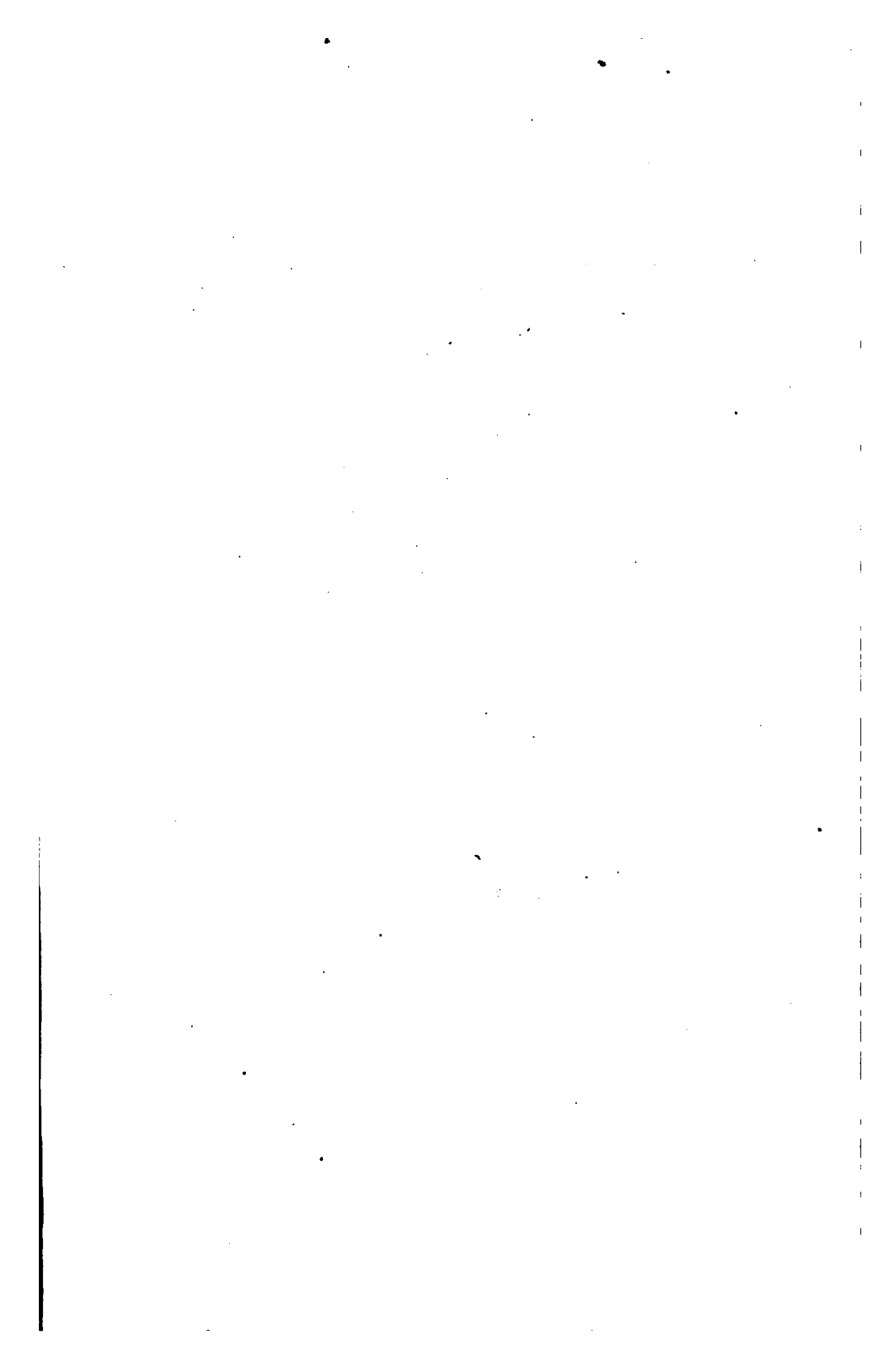
	PAGE		PAGE
List of losses and expenses which are particular average on	175	Entitled to broken stowage	41
Form of agreement for sale of a	238	Bound to accept broken stowage	42
Altering name of	254	Liability for delay in sailing after cargo loaded	48
Certificate for sale or mortgage of, abroad	257	Liability for deviation during the voyage	48
Shipbrokers		Not liable for damage when compulsory pilot on board, who caused the damage	53, 71, 296
Right to commission of	122	Liable for acts of those in charge of the ship	71
Employment of	122	Not liable when damage done by fault of harbour-masters	72
Introduction of the parties to each other by the broker	122, 123	Statutory limitation of liability	72, 307
Completion of the business	124	Liable for each separate and distinct loss	72, 307
Amount of his commission	124	Liable for damage done by giving another ship a foul berth	90
If commission depends on a contingency	124	Not liable for goods which were never shipped, even if captain has signed bills of lading for them	92
When entitled to commissions on future businesses between same parties	125	Liable for damage done to the cargo by negligence, &c.	29, 94
Division of commission by brokers	125	Only liable for such acts of the captain as he may do within the scope of his duty	95
May forfeit commission by negligence in completing business	126	Not liable for damage done by fire	96
Liable to pay pilotage for owner	293	Nor for damage to jewelry, &c., stolen from the ship	96
Liable to pay light dues	297	To whom he is to look for payment of the freight	98
Ship's Husband		His lien upon cargo for freight and its enforcement	101-105, 313
How appointed	3	Ditto, under the special Acts in force in the Port of London	105-108
Agent of owners	3	Provisions of the Merchant Shipping Acts relating to liabilities of	307
No implied authority to insure	3	(See also <i>Charter-party, Freight, Cargo, Ship, &c.</i>)	
Duty as to accounts	3	Shipwright	
Form of agreement appointing	239	Lien for repairs	59
Shipowner			
Bound to give notice of loss of ship	2, 290		
Liable for damage to cargo caused by the leaky state of his ship	32		
Bound to provide ballast	33		
Bound to provide dunnage	34		
Responsible for bad stowage of the cargo	34		
Responsible for damage done in letting goods down into ship's hold	35		

	PAGE		PAGE
Short Delivery		Steering Rules (see <i>Rule of the Road</i> .)	
Lien in cases of	102	Stevedore	
Signals		By whom he is to be appointed	35
Fog	78, 286	Stoppage in Transitu	
Board of Trade may inspect fog signals	286	Definition of	86
Of distress	287	The right can be exercised for whole or part of money unpaid	86
Private, may be used with sanction of Board of Trade	287	Stowage (see <i>Loading, Ship, and Cargo</i> .)	
For pilots	292	Stranding	
Smuggling		What is meant by, in policies	146
By seamen	274	Official investigations of	182
By pilots	294	Sublet	
Stamp		Ship may be sublet, unless forbidden by charter	10
Stamp duties on charter-parties	23	Sunday	
May be impressed or adhesive	23	Is counted as a lay-day unless charter says "working days"	10 111
If adhesive stamp used, date must be written across the stamp	23	Sufferance Wharf Acts	105
On payment of 4/6 may be impressed within seven days after signing	23	Supercargo	
After seven days and within a month on paying £10 penalty	24	Shipowner is not bound to take a supercargo, to decide port of discharge	67
Payable on charters signed abroad	24	Superintendent of Mercantile Marine	
Letters altering charter are liable to stamp duty	24	By whom appointed	260
On bills of lading	31	Powers of deputies	260
On insurance policies	149	Duties of	260
Exemptions from duty under Merchant Shipping Acts	252	To facilitate and superintend apprenticeships	261, 262
Apprenticeship indentures free from duty	262	Engagement of seamen before	263-265
Salvage bonds executed abroad free from	306	Discharge of seamen before	265
Statutes		To inquire on discharge into the death of any person during the voyage	278
List of	251	Survey	
(See <i>Digest, and Merchant Shipping Acts</i> .)		Of ships alleged by seamen to be unseaworthy	276
Steam Ships		On detention of ship	282
Rules of the road relating to	75	Naval Court may direct a	276
Lights on	76		
Fog signals on	78		
Build and equipment of	287		
Survey of passenger steamers	288		
(See also <i>Ship, &c.</i>)			

	PAGE		PAGE
Of passenger steamers . . .	288	Usual Dispatch	
(See also <i>Courts of Survey</i> , <i>Cargo, Damage, &c.</i>)		Meaning of, in charters . .	109
Survey, Courts of		Underwriters	
How composed . . .	212, 282	Of freight liable for cost of transhipping cargo . . .	55
Who are judges of . . .	212, 282	When liable for damage by sea striking the ship . . .	58
Persons appointed as assess- sors . . .	213, 282	Liable for damage by col- lision, if accidental, or if the <i>other</i> ship to blame . .	70
Registrars of . . .	213, 283	Names of, must be stated in policies . . .	136
Powers of . . .	213, 283	May re-insure his risk . . .	128
Reports to the Board of Trade . . .	214, 283	Not liable for loss to vessel running blockade, unless informed of the risk . . .	129
Rules which regulate pro- cedure of . . .	214-223, 283	Brokers negotiate policies with private . . .	129
Have jurisdiction in appeals from refusals to grant certain certificates . . .	216	Broker is liable for pre- miums to . . .	130
Jurisdiction over questions of overloading foreign ships . . .	216, 284	Cannot claim premiums from shipowner . . .	130, 145
Surgeon		Account direct to the as- sured for amount of losses . . .	130
To be carried by ships having above 100 persons on board . . .	271	Are not liable when there is misrepresentation and concealment . . .	131
Time Charters . . .	21	Or when there is deviation from voyage under a voyage policy . . .	134
Time Policies . . .	139	Are bound by valuation under a "valued policy" . .	143
Tonnage		Only liable for losses caused by perils mentioned in the policy . . .	144
Ascertaining of . . .	253	Shipowner and captain bound to endeavour to save property for . . .	145
Deck load reckoned as part of . . .	285	Signatures of, &c. . .	148
Total Loss		Liable for what losses . . .	150
What is a . . .	154	Bound to inform shipowner if they do not accept abandonment . . .	155
Amount payable for . . .	155	Liability for general aver- age . . .	145, 153, 164
Transfer		Unseaworthiness	
Of ships . . .	1, 250	Ship improperly without pilot is considered unsea- worthy . . .	134
Of property, &c., by en- dorsement of bill of lading . . .	26, 312	Complaint by seamen of 204, 276	
Of policies . . .	150		
Of mortgages . . .	257		
Transhipment			
Of cargo . . .	54, 60		
Cost of, falls on insurers of freight . . .	55		
Turn			
Of ships in loading, &c. . .	109		
Usages (see <i>Customs</i>.)			

	PAGE		PAGE
Warranty of seaworthiness		Wages of Seamen	
to master and seamen	206, 281	Agreement for payment of	263
Sending unseaworthy ships		Allotment of	265
to sea a misdemeanor	208, 281	Payment of	265
Defences to charge of un-		Remittance of	266
seaworthiness	209, 281	Seamen's right to	266
Detention of unseaworthy		Recovery of	267
ships	211, 282	Of deceased seamen	267
Courts of Survey to decide		When ship is lost	267
as to	212, 282	When left abroad	268
Composition of Court of		When volunteering into navy	270
Survey	212, 282	Deduction from for miscon-	
Who to summon Court of		duct	274, 275
Survey	213, 283	Deduction from by naval	
Procedure of Court of		court	277
Survey	213, 283		
Costs and damages incurred		Warranties	
by reason of	214, 283	Definition of	14
Scientific referees to decide		Must be strictly complied	
points of scientific diffi-		with	15
culty or important princi-		Instances of in charter-	
ple	215, 284	parties	16, 17
Of foreign ships by over-		Representations distin-	
loading	216, 284	guished from warranties	17
From stowage of grain		To be at port of loading by	
cargoes	217, 284	a certain day	16
From carrying deck car-		In insurance policies	132-136
goes	218, 285		
General rules for procedure		Water	
of Courts of Survey	223, 283	Delay caused by temporary	
		want of water is not	
Verbal		chargeable against mer-	
Promises during negotiation		chant	13
of charter not binding	8	Unless so provided in the	
Statements of depth of		charter	14
water	13	Draught of, may be taken	
Evidence cannot alter or		and recorded by Board of	
vary written charter	19	Trade	284
		Draught of, must be entered	
Volunteering		in official log	284
Into the navy	269		
		Wear and Tear	
Voyage		Not chargeable to under-	
Agreed for, cannot be		writers	58
changed by a mere agent	40		
When it must be com-		Witness	
menced	48	Attesting documents under	
Deviation during	49, 50	the Merchant Shipping	
Accidents during	54-61	Acts need not be called	
Calling for orders upon	67, 68	to prove them	310
Description of, in insurance			
policy	139		

	PAGE		PAGE
Wood Cargo		Master's duty to save all he	
Carried on deck is reckoned		can from . . .	62
as part of ship's tonnage		Payment of wages when	
218, 285		ship is lost . . .	266
Prohibited time for carriage		Board of Trade investiga-	
on deck of . . . 40, 218, 285		tions into . . .	299
Penalty for breach of this		Receivers of wreck . . .	301
provision . . . 219, 285		Unclaimed wreck . . .	304
		Offences in respect of . . .	304
Wreck		Wreck Commissioner	
Duty of captain as to		By whom appointed . . .	183, 300
sending on the cargo in		Number of . . .	183, 300
case of . . . 54		Powers of . . .	183, 300
May be sold by captain, if		May be judge of Court of	
it is impossible to repair		Survey . . .	282
the ship . . . 61		May hold same examination	
Constructive, and actual		as a Receiver of Wreck . . .	301
total loss . . . 61, 154			



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